85-758

No. ———

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IN THE

Supreme Court of the United States

October Term, 1985

CITY OF PRIOR LAKE, MINNESOTA,
Appellant/Petitioner,

vs.

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY AND EDITH CROOKS,
Respondent,

UNITED STATES OF AMERICA,
Intervenor.

On Writ of Certiorari from the United States Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI OF THE CITY OF PRIOR LAKE, MINNESOTA

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QUESTION PRESENTED FOR REVIEW

Whether the City of Prior Lake may, consistent with Public Law 280 (codified as amended at 18 U.S.C. Sec. 1162, 25 U.S.C. Sec. 1321-26, 28 U.S.C. 1360 (1982)) annex Indian territory. If so, does that annexation subject the inhabitants of the annexed territory to the full civil and criminal jurisdiction of the City?

LIST OF ALL PARTIES TO THE PROCEDURE

1. City of Prior Lake, Minnesota, Petitioner.
2. Shakopee Mdewakanton Sioux Community, Respondent.
3. Edith Crooks, Respondent.
4. The United States of America, Respondent-Intervenor.

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PETITION FOR WRIT OF CERTIORARI OF THE CITY OF PRIOR LAKE, MINNESOTA

REFERENCE TO THE OFFICIAL AND UNOFICIAL REPORTS OF THE OPINIONS DELIVERED IN THE COURTS BELOW.

1. *Shakopee Mdewakanton Sioux Community v. City of Prior Lake,* — F.2d — (8th Cir. 1985), Nos. 84-5167, 85-5018 (August 30, 1985).

2. *Shakopee Mdewakanton Sioux Community v. City of Prior Lake,* No. 3-83-1059 (D. Minn. August 31, 1984).

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

The Shakopee Mdewakanton Sioux Community brought an action for declaratory and injunctive relief, attorneys fees and costs under the Voting Rights Act of 1965, 42 U.S.C. Sec. 1971(a)(1) and 1971(a)(2)(a) (1982); the Voting Rights Act of 1982, 42 U.S.C. Sec. 1973(a) (1982); the Fourteenth Amendment to the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. Sec. 1983 (1982); and the Indian Reorganization Act of 1934, 25 U.S.C. Sec. 465 (1982). By order dated August 31, 1984, the United States District Court, District of Minnesota, Third Division, ordered that the residents of the Shakopee Mdewakanton Sioux Indian Reservation are residents of the City of Prior Lake, Minnesota and as such are entitled to all the rights which attend such citizenship. The City of Prior Lake is permanently enjoined from preventing residents of the Reservation from full participation in city elections and must provide municipal services.

The City of Prior Lake appealed to the United States Court of Appeals, Eighth Circuit, pursuant to 28 U.S.C. Sec. 1291. By judgment dated August 30, 1985, the United States Court of Appeals for the Eighth Circuit affirmed the declaratory judgment and the issuance of the permanent injunction by the district court. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Sec. 1254(1).

THE CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS WHICH THE CASE INVOLVES.

1. Public Law 280, (codified as amended at 18 U.S.C. Sec. 1162, 25 U.S.C. Sec. 1321-26, 28 U.S.C. Sec. 1360 (1982)).

2. Minn. Stat. Sec. 414.031.

3. Voting Rights Act of 1965, 42 U.S.C. Sec. 1971 (a)(1) and 1971 (a)(2)(a) (1982).

4. Voting Rights Act of 1982, 42 U.S.C. Sec. 1973(a) (1982).

5. The Fourteenth Amendment to the United States Constitution.

6. The Civil Rights Act of 1871, 42 U.S.C. Sec. 1983 (1982).

7. Indian Reorganization Act of 1934, 25 U.S.C. Sec. 465 (1982).

Because the provisions involved are lengthy, the pertinent text to each statute section is set forth in the Appendix.

STATEMENT OF THE CASE

The entire factual record upon which the District Court of Minnesota and the United States Court of Appeals for the Eighth Circuit considered this matter is contained in the Stipulation of Facts signed by all parties and filed with the district court. For purposes of this Writ, the City of Prior Lake will only briefly summarize pertinent paragraphs of the Stipulation of Facts which are contained, in their entirety, in the Appendix.

In the early 1800's, the Mdewakanton Band of Sioux Indians occupied with other Sioux bands the southern one-third of the present State of Minnesota. The Sioux bands ceded their lands to the United States in a series of treaties in the mid-nineteenth century. A reservation promised the Mdewakanton band in the 1858 treaties was finally created

with the purchase of three parcels of land in Eagle Creek Township, Scott County, Minnesota in 1890 and 1891. The United States has held the land constituting the Sioux Mdewakanton Sioux Reservation (the Reservation) in trust for the Sioux Mdewakanton Sioux Community since the purchase.

In 1972, the City of Prior Lake annexed a portion of the territory formally comprising Eagle Creek Township, pursuant to Minnesota's Municipal Annexation Statute, Minn. Stat. Sec. 414.031. The territory annexed by Prior Lake included approximately half of the lands which were a part of Eagle Creek Township. The land annexed by Prior Lake bounded the land held in trust by the federal government for the Shakopee Mdewakanton Sioux Community as a reservation. The City of Prior Lake did not consult with members of the Shakopee Mdewakanton Sioux Community concerning the annexation, and the members of the Shakopee Mdewakanton Sioux Community did not consent to the jurisdiction of the City of Prior Lake or to the annexation of their lands. The record shows a complete absence of discussion between the tribal and municipal governments involved. The City of Prior Lake did not consider the Indian lands to be part of the City of Prior Lake and as a result, all persons (of any race or creed) living within the reservation parcels were denied municipal citizenship by the City of Prior Lake, as are all other persons not residing within the City of Prior Lake. In conformance with this understanding, Prior Lake signed a contract with the reservation bingo facility management in 1982 in which Prior Lake began to provide a limited fire and rescue service to the Reservation land for a fee.

On July 18, 1983, the City of Prior Lake added a third

voting precinct for city-wide elections and drew new precinct boundaries in accordance with Minnesota law. The purpose of this redistricting was to ease the time and distance involved for voting in municipal elections. Consistent with the City of Prior Lake's view concerning the status of the reservation land of the Shakopee Mdewakanton Sioux Community, municipal voting precinct number 2 was drawn explicitly to exclude the land of the reservation, which would otherwise lie within the exterior boundaries of this voting precinct.

Subsequently, the Shakopee Mdewakanton Sioux Community filed this action in the federal court. The Shakopee Mdewakanton Sioux Community sought a declaratory judgment that residents of the Shakopee Mdewakanton Sioux Indian Reservation are residents of the City of Prior Lake, Minnesota, and as such were entitled to all of the rights which attend such citizenship. The Shakopee Mdewakanton Sioux Community also sought an order permanently enjoining the City of Prior Lake from preventing Reservation residents, who otherwise qualify as eligible voters, from fully participating in the City of Prior Lake's elections and from providing municipal police, fire and rescue services to the Reservation in a different manner or on a different basis from which those services are provided to other citizens of the City of Prior Lake. By Order dated September 23, 1983, as amended, the federal district court preliminarily enjoined the implementation of the provision of Resolution No. 83-18 which excluded the Reservation from the second election precinct. The court declined to grant preliminary relief mandating the City to provide municipal services to the Reservation on the same basis provided to the other residents in the absence of any evidence

that the City intended to cease performance under a contract for such services between the City and the Mdewakanton Sioux Community's commercial bingo enterprise.

By order dated August 31, 1984, the district court ordered the following:

1. That he residents of the Shakopee Mdewakanton Sioux Indian Reservation are residents of the City of Prior Lake, Minnesota and as such are entitled to all of the rights which attend such citizenship.

2. That the City of Prior Lake is permanently enjoined from preventing Reservation residents, who otherwise qualify as eligible voters, from fully participating in the City's elections and from providing municipal services, such as police, fire and rescue services, to the Shakopee Mdewakanton Sioux Indian Reservation and its residents in a different manner or on a different basis from which municipal services are provided to other citizens of the City of Prior Lake.

In September of 1984, the City of Prior Lake, pursuant to 28 U.S.C. Sec. 1291, appealed the district court ruling to the United States Court of Appeals for the Eighth Circuit.

By judgment dated August 30, 1985, the United States Court of Appeals for the Eighth Circuit affirmed the declaratory judgment and the issuance of the permanent injunction by the district court and modified the award of attorneys fees. The Eighth Circuit concluded that the district court did not err in finding that the Reservation was included in the part of Eagle Creek Township annexed in 1972 and that said annexation was not prohibited under state and federal law. With regard to federal law, the

Eighth Circuit concluded that annexation by the City of Prior Lake of the Indian reservation land did nothing more than change the boundaries of the City of Prior Lake. It did not increase the civil and criminal jurisdiction of the City of Prior Lake over the Reservation. The Eighth Circuit concluded that "the Minnesota annexation statute neither 'frustrates nor interferes with tribal self-government' . . . *Chase*, 573 F.2d at 1018, nor 'impairs a right granted or reserved by federal law.' *Id. See also, Three Affiliated Tribes,* 104 Sup. Ct. at 2274." The City of Prior Lake now respectfully requests that this Court assert its jurisdiction under 28 U.S.C. Sec. 1254(1).

REASON FOR THE WRIT

Although presented in a somewhat unusual factual situation, this case presents for the Court's resolution issues underlying the historically uneasy, and often complex, political relationship between tribal governments, on the one hand, and local municipal governments, on the other. The United States Court of Appeals for the Eighth Circuit held that a state may, consistent wih Public Law 280, annex Indian territory into a municipal corporation. By that annexation, the Reservation residents are entitled to all the same privileges and services as other citizens of the municipal corporation but need not meet the reciprocal obligations of citizenship. Annexation, in Minnesota and elsewhere, explicitly extends the political authority of the annexing body over the annexed territory. In this light, annexation of Indian territory is clearly outside the jurisdiction a state may exercise under Public Law 280. *See, e.g., Bryan v. Itasca County, Minnesota,* 426 U.S. 373, 389 f.n.14 (1976.). In its holding, the Eighth Circuit has devised a

non-political annexation applicable to Indian territory, which is foreign to Minnesota law. By this result, residents in Indian territory acquired a unique political status in Prior Lake: the right to govern, but no obligation to submit to government; the right to vote, but no obligation to pay taxes; the right to fire fighting services, but no obligation to obey fire codes; the right to planning services, but no obligation to obey land use laws, etc.

In Minnesota there is an "implied prerequisite" that territory being annexed "be so conditioned as properly to be subjected to city government." *State v. City of White Bear Lake,* 255 Minn. 28, 95 N.W.2d 294 (1959). The Eighth Circuit found there was "no discernible reason why the sovereign status of the Reservation precludes satisfaction of the implied prerequisite to annexation in Minnesota." *City of Prior Lake v. Shakopee Mdwekanton Sioux Community,* — F.2d —, (8th Cir. 1985) Nos. 84-5167 and 85-5018, p. 7 (August 30, 1985). Later the court observed "annexation does not increase municipal civil regulation jurisdiction over Indian country." *Id.* at p. 10. It is the contradiction inherent in this ruling that adds mystery to the scope of Public Law 280 and requires the attention of this Court.

Annexation by a municipal corporation of territory which has previously been outside its political boundary is an act specifically reflecting the sovereign authority of the state. All ordinances and contracts are thus extended over and become operative in the added territory so that such territory becomes entitled to the same privileges and subject to the same burdens as that within the original limits. Accordingly, if the City of Prior Lake could properly annex tribal lands, under the law of annexation, the City's sover-

eign power, including its civil regulatory authority, would be extended over the tribes. Annexation, ordinarily applied, would transfer regulation of tribal community activities and planning to the municipal corporation, leaving the tribal government with little or no residual authority.

Congress has encouraged, under Sec. 476 of the Indian Reorganization Act of 1934 (sometimes referred to as the Wheeler-Howard Act), the formation and exercise of tribal self-government on reservation trust lands. 25 U.S.C. Sec. 461-78 (1970). Public Law 280 (codified as amended at 18 U.S.C. Sec. 1162, 25 U.S.C. Sec. 1321-26, 28 U.S.C. Sec. 1360 (1982)) shifted jurisdiction over Indian country from the federal government to the states in some respects, but in others prolonged existing federal supervision and Indian immunity from state jurisdiction. Under Public Law 280, Congress extended Minnesota's criminal and civil dispute resolution jurisdiction to Indian territory. Otherwise, the tribal government remained more or less equivalent to local government within the state, and continued to possess the authority to govern its community within the Reservation territory. The construction of Public Law 280 which this Court has advanced recognizes tribal autonomy on a par with the autonomy of local units of government. This construction renders any extension of municipal political authority over Indian territory an impossibility. By analogy, this Court has observed that Indians living on reservations are unable to incorporate under state laws. *Bryan v. Itasca County, Minnesota,* 426 U.S. 373, 389, f.n.14 (1976). Annexation may be viewed as forcible incorporation. The goal has been to have tribal self-government maintain a role equivalent to municipal government. Annexation counters achievement of this goal.

The Eighth Circuit, evidently recognizing that annexation with its ordinary political implications did interfere with tribal self-government and did impair rights of autonomy protected by federal law, sought to avoid this conflict by treating annexation as nothing more than a geographic accretion stripped of all implications of political authority. The Eighth Circuit reasoned that by the annexation of Indian trust land, the City must extend its privileges and services to its residents, but may not exact the obligations of municipal citizenship. Prior Lake asserts there was no annexation at all because Minnesota simply lacks authority to annex Indian territory to municipal organizations. Any attempted or apparent annexation is void. Prior Lake's position correctly expresses the relationship between Indian tribal governments and state (or local) governments envisioned in *Bryan, supra,* and most recently in *Three Affiliated Tribes v. Wold Engineering,* — U.S. —, 104 S. Ct. 2267 (1984). Annexation, like taxation, is the power to destroy.

There is no authority in federal statutes to support the Eighth Circuit's creation of a form of annexation without authority to govern as a special accommodation to the autonomy of Indian tribal governments. Prior Lake and the State of Minnesota have the same power to annex Indian lands that they do to annex the State of Iowa—none.

The Eighth Circuit cannot avoid the obvious conflict between Public Law 280 and annexation of tribal lands by simply granting those rights to the tribe ordinarily incident to annexation, but ignoring those incidents of annexation imposing obligations concurrent with the rights. Annexation is a singular act and is not subject to the modular construction innovated by the Eighth Circuit. Public Law 280

does not confer authority upon the federal courts to select those aspects of a singular state action which do not offend tribal autonomy and reject the balance.

The hardships imposed upon Prior Lake are obvious. Its citizens, other than residents of the Reservation, have to provide financial support for services to residents, commercial enterprises, and a large gambling facility on the Reservation, without any tax support from the recipients and without the right to assure obedience of its codes regulating fire safety, building safety, land use, sanitation, traffic, etc. This manner of lop-sided assimilation is quite contrary to anything anticipated in the history of Public Law 280 or in this Court's several constructions of that statute.

The broader implications of the decision of the Eighth Circuit are equally disturbing. Indian governments, like Respondent here, are showing increasing aggressiveness in developing Indian lands, frequently exploiting their right to do so free of state and local regulatory authority. The Respondent's bingo facility is only one example of this trend. This entrepreneurship is hardly to be discouraged. This development, however encouraged, may not be financed and supported, even in part, by dividing the citizenship of a municipality like Prior Lake into a division closely resembling the lords and serfs of 18th Century Russia. All of Prior Lake, except the Reservation residents, must contribute to pay for police, fire and other civil services to support the Reservation. If the Reservation increases its wealth and therefore its demand for services, the burden of the serfs multiplies but the obligation of the lords remains nothing. Public Law 280 has become a sword not a shield.

The Eighth Circuit's decision in this matter is simply unsupportable. This Court must resolve the complex poli-

tical relationship between tribal governments, on the one hand, and local municipal governments on the other, which this case presents to the Court. For all of the above stated reasons, the City of Prior Lake respectfully requests that its Petition for Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Shakopee Mdewakanton Sioux Community and Edith Crooks,

Appellees,

United States of America, Intervenor Below,

Appellee,

v.

City of Prior Lake, Minnesota,

Appellant.

Appeal from the United States District Court for the District of Minnesota

No. 84-5167

Submitted: February 12, 1985
Filed: August 30, 1985

Before LAY, Chief Judge, HEANEY and FAGG, Circuit Judges.

LAY, Chief Judge.

The City of Prior Lake, Minnesota appeals the decision of the district court[1] granting a permanent injunction requested by the Shakopee Mdewakanton Sioux Commun-

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[1]The Honorable Paul A. Magnuson, United States District Judge for the District of Minnesota.

ity, individual plaintiff Edith Crooks, and the intervenor United States (collectively referred to as the Community), against Prior Lake and awarding attorneys' fees pursuant to 42 U.S.C. §§ 19731 (e), 1988 (1982). Prior Lake also appeals the district court's calculation of attorneys' fees. We affirm the declaratory judgment and the issuance of the permanent injunction by the district court; we modify the award of attorney fees.

FACTS

The almost 300 acre Shakopee Mdewakanton Sioux Reservation is located northeast of Prior Lake, Minnesota. In the early 1800s, the Mdewakanton Band of Sioux occupied with other Sioux bands the southern one-third of the present state of Minnesota. The Soux bands ceded their lands to the United States in a series of treaties in the mid-nineteenth century. A reservation promised the Mdewakanton Band in an 1858 treaty was finally created with the purchase of three parcels of land in Scott County and Eagle Creek Township in 1890 and 1891. The United States has held the land constituting the Shakopee Mdewakanton Sioux Reservation (the Reservation) in trust for the Community since the purchase.

In 1972, Prior Lake annexed a portion of Eagle Creek Township pursuant to Minn. Stat. § 414.031. The description of the lands included in the annexation, found in the Municipal Commission of the State of Minnesota's 1972 findings of fact and conclusions of law, specifically refers to the northern boundary of part of the Reservation as forming a portion of the Eagle Creek Township territory annexed to Prior Lake. The district court found that the Reservation lands were part of the political unit comprising Eagle Creek Township in 1972.

In 1983, the City Council of Prior Lake passed a resolution revising the boundaries of Prior Lake's election precincts. The resolution changed the number of precincts from two to three, and explicitly excluded the Reservation lands lying within the boundaries of precinct number two. The resolution thus excepted Reservation residents otherwise eligible from voting in municipal elections and from receiving municipal services on the same basis as that upon which such services are provided to other residents of Prior Lake. Eligible voters living on the Reservation apparently did vote in municipal elections between 1972 and 1983. Reservation fire and rescue protection services have been performed since 1982 under a contract between Prior Lake and the manager of the Reservation's commercial bingo operation, and are subject to cancellation with three months' written notice.

The Community brought this action for declaratory and injunctive relief, attorneys' fees and costs pursuant to U.S. Const. amend. XIV; 42 U.S.C. §§ 1971 (a) (1), (a) (2) (A), 1973 (a), 1983 (1982); 25 U.S.C. § 465 (1982). The Community sought a declaratory judgment that Reservation residents are also residents of Prior Lake and are entitled to all rights attending such municipal residency. The Community also sought a permanent injunction ordering Prior Lake not to prevent Reservation residents otherwise eligible from participating in municipal elections and further enjoining Prior Lake from failing to provide Reservation residents with police, fire, and rescue and other municipal services in the same manner as that in which services are provided other Prior Lake residents. Prior Lake filed a counterclaim for a declaratory judgment that if Reservation residents were found to be residents of Prior

Lake, all municipal ordinances, regulations, and all state and federal laws would apply to Reservation residents. Prior Lake further requested an injunction permanently enjoining Reservation residents from violating such ordinances, regulations, and laws. The district court granted the declaratory and injunctive relief requested by the Community, and dismissed Prior Lake's counterclaim.

The district court also granted the Community's request for attorneys' fees and costs. In a supplemental opinion, the court awarded the Community attorneys' fees totalling $17,383.31. Prior Lake appeals the district court's decision on the merits and the award of attorneys' fees.

DISCUSSION

Prior Lake raises several issues on appeal, contending that the district court erred (1) in finding the Reservation was a part of Eagle Creek Township, (2) in holding that the Reservation could be annexed under either state or federal law, (3) in awarding attorneys' fees and costs to the Community, and (4) in calculating the attorneys' fees award using a base hourly rate higher than either the attorneys' contract rate with the Community or his own current hourly billing rate. We affirm the district court on the first three points; we modify the district court's order on attorney fees.

1. Declaratory and Injunctive Relief

Prior Lake first argues the district court erred in finding the Reservation was part of Eagle River Township at the time of the 1972 annexation. Because the Municipal Commission annexation order included only territory which

was a portion of Eagle River Township, Prior Lake contends the Reservation was not made a part of the annexation. We cannot say the district court erred in finding the Reservation was part of the Eagle River Township political unit in 1972. The evidence supports the district court's finding that the Reservation was encompassed geographically within Eagle River Township in 1972. Prior Lake appears to argue that because the Reservation is held in trust by the United States and is not fully subject to state jurisdiction, it was never made a part of the political unit of Eagle Creek Township.

In *Little Thunder v. State of South Dakota*, 518 F.2d 1253 (8th Cir. 1975), this court held that residents of unorganized counties—counties which are attached to adjoining organized counties for the purposes of government and administration—possess a substantial interest in the choice of county officials governing their affairs, and thus cannot be denied the right to vote in elections of the governing organized counties. We stated "[t]he fact that plaintiffs are reservation Indians is not of great significance. While it is true that * * * the state has limited jurisdiction over them, the effects of county government are not completely absent." *Little Thunder*, 518 F.2d at 1257. Congress conferred United States citizenship on Indians as a group with the passage of 8 U.S.C. § 1401 (b) (1982). State and local citizenship are derivatives of federal citizenship. *See Goodluck v. Apache County*, 417 F. Supp. 13, 15 (D. Ariz. 1975), *aff'd*, 429 U.S. 876 (1976). That a tribal government exercises sovereign powers on a reservation and that reservation lands are held in trust by the United States does not prevent the reservation from constituting a portion of a state and a political subdivision of a

state. The Municipal Commission of Minnesota's 1972 findings specifically included the Reservation within Eagle Creek Township. We agree with the district court that the Reservation clearly was part of Eagle Creek Township at the time of the 1972 annexation proceedings. *Cf. Howard v. Commissioners of the Sinking Fund*, 344 U.S. 624, 626-27 (1953) (holding a state can include federal lands within its municipal boundaries so long as the plenary federal jurisdiction within the federal enclave is not disturbed); *Chase v. McMasters*, 573 F.2d 1011, 1018-19 (8th Cir.), *cert. denied*, 439 U.S. 965 (1978) (holding a municipality violated the Supremacy Clause in refusing to connect land held in trust by the United States to city water and sewer lines although expressly declining to decide whether a municipality must provide all municipal services to Indians living on tax-exempt property).

Prior Lake argues that even if the district court did not err in finding that the Reservation was included in the portion of Eagle River Township annexed in 1972, the annexation was prohibited under state and federal law and thus is void. Although the district court found that the requirements in the Minnesota annexation statute were met by the 1972 proceedings, *see* Minn. Stat. Ann. § 414.031 (West Supp. 1985), Prior Lake argues that a "judicial gloss" on the annexation statute creating an "implied prerequisite" to annexation was not satisfied.[8] In *State v.*

[8]Prior Lake further urges that the district court should have granted its motion for certification to the Minnesota Supreme Court of the question of whether federal enclaves or Indian lands held in trust are annexable under the Minnesota statute. We decline to follow Prior Lake's suggestion to this court to certify the issue to the Minnesota Supreme Court. *See* Minn. Stat. Ann. § 480.061 subd. 1 (West Supp. 1985). The Minnesota annexation statute and the Minnesota Supreme Court's construction of the statute in *State v. City of White Bear Lake*, 225 Minn. 28, 95 N.W.2d 294 (Minn. 1959), provide

City of White Bear Lake, 255 Minn. 28, 95 N.W.2d 294 (1959), the Supreme Court of Minnesota construed the Minnesota annexation statute to include an "implied prerequisite" requiring "the annexation territory as a whole [to be] so conditioned as properly to be subjected to [city government] * * *." *City of White Bear Lake*, 255 Minn. at 34-5, 95 N.W.2d at 299. The state court designated three factors necessary to determine property is "so conditioned:"

> (1) that the platted portion of the lands contains a compact center or nucleus of population, (2) that the adjacent unplatted lands are suburban in character, and (3) that the unplatted lands have with the platted portions of the annexing city a unity of interest in the maintenance of a city government.

Id. (footnote omitted.)

Prior Lake contends that because it cannot subject Reservation residents to municipal taxes or ordinances, the Reservation fails to meet the *City of White Bear Lake* implied prerequisite to annexation. It is true that Reservation residents are not subject to municipal civil regulatory control. *See Bryan v. Itasca County*, 426 U.S. 373, 388 (1976); (stating Pub. L. 280, 67 Stat. 588 (codified as amended at 28 U.S.C. 1162, 25 U.S.C. §§ 1321-26, 28 U.S.C. § 1360 (1982)), legislative history does not support an extension of civil jurisdiction to the states that could

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this court with sufficient guidance to decide the state annexation powers issue. Absent a "close" question and lack of state sources enabling a nonconjectural determination, a federal court should not avoid its responsibilitty to determine all issues before it. Indeed, the probable delay caused by the certification process would outweigh any benefit the state court's response could provide in this case. *See Hatfield v. Bishop Clarkson Memorial Hospital*, 679 F.2d 1258, 1261 n.4 (8th Cir. 1982).

undermine tribal government, "a possible result if tribal governments and reservation Indians were subordinated to the full panoply of civil regulatory powers * * * of state and local governments") (footnote omitted); *United States v. County of Humboldt,* 615 F.2d 1260 (9th Cir. 1980); *Santa Rosa Band of Indians v. Kings County,* 532 F.2d 655 (9th Cir. 1975), *cert. denied,* 429 U.S. 1038 (1977). There is no discernible reason, however, as to why the sovereign status of the Reservation precludes satisfaction of the implied prerequisite to annexation in Minnesota. As the district court noted, the Municipal Commission of the State of Minnesota in its 1972 order approving the annexation addressed the factors listed in *City of White Bear Lake* and found them satisfied. It is undisputed that Prior Lake did not object to the 1972 findings.[3] We hold that the district court did not err in refusing to invalidate the annexation on the basis of failure to meet the Minnesota annexation statute.

Prior Lake also contends federal law prohibited annexation of the Reservation absent the Community's consent; because the Community did not consent, the annexation was invalid. Prior Lake's reasoning is based on a 1968 amendment to Pub. L. 280, *see 25 U.S.C. § 1326 (1982),* which requires states wishing to assume jurisdiction over

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[3] *Bryan v. Itasca County,* 426 U.S. 373 (1976), the United States Supreme Court case construing the scope of state regulatory and tax jurisdiction over Indian reservations under Pub. L. 280 was decided after the 1972 annexation proceedings. Prior Lake argues that it did not challenge the Municipal Commission's order of annexation because the special trust status of the Reservation "was not appreciated at all in Minnesota prior to 1976." Prior Lake cannot employ a decision reached four years after the annexation to read the *City of White Bear Lake* implied prerequisite as not having been satisfied at the time of the annexation. In any event, we find no indication from state sources that *Bryan* rendered Indian trust lands unannexable under state law.

Indian country under Pub. L. 280 to obtain the consent of a majority of the adult enrolled Indians in the affected area. Prior Lake further relies on a statement in *Bryan* that the 1968 amendment to Pub. L. 280 "requires tribal consent as a condition to further state assumptions of the jurisdiction provided in [Pub. L. 280]." *Bryan*, 426 U.S. at 386. Prior Lake misconstrues both the 1968 amendment to Pub. L. 280 and the Supreme Court's statement in *Bryan*. In passing Pub. L. 280 in 1953, Congress expressly transferred criminal and civil jurisdiction over Indian country to certain states, including Minnesota,[4] *see* 18 U.S.C. § 1162; 28 U.S.C. § 1360, and empowered remaining states to assert, if they chose to do so, jurisdiction over Indian country located within their boundaries. The 1968 amendment requires tribal consent before a state that did not acquire jurisdiction over Indian country before 1968 can assert such jurisdiction.[5] As the Supreme

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[4]The Red Lake Reservation in Minnesota was exempted from the conferral of jurisdiction.

[5]25 U.S.C. § 1321 reads in relevant part:

> Assumption by State of criminal jurisdiction
>
> (a) Consent of United States; force and effect of criminal laws
>
> The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

25 U.S.C. § 1322 reads in relevant part:

> Assumption by State of civil jurisdiction
>
> (a) Consent of United States; force and effect of civil laws
>
> The consent of the United States is hereby given to any State not having jurisdiction over civil cause of action between Indians or to which Indians are parties which arise in the areas of Indian

Court recently stated, the 1968 amendments "add[ed] tribal consent requirements, [but] those requirements were not made retroactive; the 1968 amendments therefore did not displace jurisdiction previously assumed under Pub. L. 280 * * *." *Three Affiliated Tribes v. Wold Engineering*, 104 S. Ct. 2267, 2276 (1984) (footnote omitted). Because Minnesota acquired criminal and civil jurisdiction with the passage of Pub. L. 280, the 1968 amendments did not eliminate Minnesota's jurisdiction; tribal consent is unnecessary in Minnesota to an exercise of jurisdiction within the bounds of Pub. L. 280.

More importantly, Prior Lake mistakenly equates annexation with an increase of civil jurisdiction over the Reservation. The annexation, however, did nothing more than change the boundaries of the City of Prior Lake. After 1972, the Reservation was located within the limits of the City of Prior Lake rather than within the limits of Eagle River Township. The Minnesota annexation statute neither "frustrates nor interferes with tribal self-government * * *," *Chase*, 573 F.2d at 1018, nor "impairs a right granted or reserved by federal law." *Id.; see also Three Affiliated Tribes*, 104 S. Ct. at 2274. The 1972 annexation was valid under federal law. Prior Lake has neither more nor less jurisdiction over the Reservation than did Eagle River Township.

We hold that neither state nor federal law prevented

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country situated within such State to assume, with the consent of of the tribe occuping the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such state has jurisdiction over other civil cause of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within the State.

Prior Lake from annexing the Reservation. Prior Lake conceded in the district court that if the annexation were valid, eligible Reservation residents would be entitled to vote in municipal elections, and all Reservation residents would be entitled to the benefits of citizenship in Prior Lake. We thus affirm the district court's order declaring Reservation residents citizens of Prior Lake and permanently enjoining Prior Lake from preventing eligible Reservation residents from participating in the City's elections and from refusing to provide municipal services to Reservation residents on the same basis as that upon which municipal services are provided to other Prior Lake citizens. Because annexation does not increase municipal civil regulatory jurisdiction over Indian country, we also affirm the dismissal of Prior Lake's counterclaim.

2. Attorneys' Fees

Prior Lake contends the district court abused its discretion in awarding attorneys' fees to the Community pursuant to 42 U.S.C. §§ 19731 (e), 1988. Although we agree with Prior Lake that not every political dispute with a tribal government is a civil rights dispute, we cannot say the district abused its discretion in awarding fees to the Community.

The issues in this case concern the right of Reservation residents to vote and to receive municipal services on an equal basis with other Prior Lake residents. These kinds of questions are within the purview of the statutes under which the district court awarded the Community attorneys' fees. Because Prior Lake conceded that Reservation residents were entitled to vote and to receive services if the annexation were upheld, the district court did not need to

reach the Community's civil rights violations claims. *Monahan v. State of Nebraska*, 687 F.2d 1164, 1172 (8th Cir. 1982), *cert. denied, sub nom. Rose v. Nebraska*, 460 U.S. 1012 (1983); *see also Robert M. v. Benton*, 671 F.2d 1104 (8th Cir. 1982). The Community's civil rights claims certainly were not frivolous. Absent special circumstances not present here, a successful litigant ordinarily should recover attorneys' fees in § 1983 actions. *See Riddell v. National Democratic Party*, 624 F.2d 539, 543-45 (5th Cir. 1980). We hold the district court did not abuse its discretion in awarding attorneys' fees to the Community.

Finally, Prior Lake argues that the district court abused its discretion in its calculation of the amount of the attorneys' fees award because the district court based its computation on an hourly rate higher than both a rate under a contract with the Community which was approved by the Bureau of Indian Affairs and the attorney's own current billing rate. We agree. Under the Bureau of Indian Affairs approved contract with the Shakopee Mdewakanton Sioux Community, the attorney charged $60 per hour before a certain date and $65 per hour after a certain date. The attorney stated in his affidavit that his "current billing rate" is $70 per hour, and that the lower rates charged the Community under the contract reflect both a long relationship between the attorney and the Community and the attorney's perception that he serves the public interest in representing this client. The district court granted the attorney's request for an award of attorneys' fees based on an hourly rate of $100 per hour. The court reasoned that it was not bound by the attorney's own rates in determining the reasonable hourly rate component of the basic or "lodestar" hours multiplied by rate calculation, and thus

could employ a rate "charged by attorneys of like skill performing similar work [in the relevant community.]". Based on the attorney's skill and experience and on an affidavit stating that if the attorney's work had not been under a BIA contract a fair rate of compensation would have been $100-$125 per hour, the district court found the attorney's requested rate "well within [the prevailing] fee range." The court declined, however, to increase the lodestar rate by a multiplier designed to recognize the superior quality of the attorney's services.

In *Avalon Cinema Corp. Thompson*, 689 F.2d 137 (8th Cir. 1982), we set forth the usual procedure to be used in calculating attorneys' fees. The district court first computes the base "lodestar" figure by "multiply[ing] the number of hours reasonably expended times *the lawyer's regular hourly rate.*" *Avalon Cinema Corp.*, 689 F.2d at 139 (emphasis added). The court next considers other relevant factors listed in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), and can increase or decrease the basic lodestar figure. In rare circumstances the district court can increase a fee award because of the quality of the work performed or the great public importance of the case. As we have recognized in several cases, the critical question is whether the fee award is based on a "reasonable" hourly rate. We do not automatically accept the lawyer's rate as reasonable; we look also to the "ordinary fee 'for similar work in the community'." *Avalon Cinema Corp.*, 689 F.2d at 140 *quoting Johnson* at 718. *See also Jorstad v. IDS Realty Trust*, 643 F.2d 1305, 1313 n.4 (8th Cir. 1981).

In calculating the reasonable fee, a court must be mindful of Congress' intent to encourage the enforcement of

constitutional rights through the award of "fees which are adequate to attract competent counsel, but which do not produce windfalls to attorneys." S. Rep. No. 1011, 94th Cong., 2d Sess. 6 (1976), *reprinted in* 1976 U.S. Code Cong. & Ad. News 5908, 5913. As the District of Columbia Circuit Court noted in *Laffey v. Northwest Airlines, Inc.*, 746 F.2d 4, 24 (D.C. Cir. 1984), *cert. denied*, No. 84-1655 (June 17, 1985), the lodestar rate is the opportunity cost of the clients the firm turned away to represent the plaintiffs.

Congress intended that fee awards be calculated in the same manner for both private counsel and nonprofit legal services organizations. *Blum v. Stenson*, 104 S. Ct. 1541, 1547 (1984). Unlike cases in which the plaintiff's attorneys have no historical billing rates, however, the Community's attorney has well defined billing rates which can be used to determine the lodestar rate if those rates are "reasonable." Accepting the attorney's own contract or billing rate where available as the attorney's evaluation of the prevailing market is not tantamount to calculating fee awards for private attorneys differently from those calculated for nonprofit legal services groups. *See Blum*, 104 S. Ct. at 1547 n.11.

In this case, the attorney is performing the same type of service he performs in his general practice. As such, the attorney's own billing rate provides a reliable indicator of the attorney's assessment of what his clients are willing or able to pay for his services. A second attorney's affidavit submitted by the Community's counsel states that the present rate for attorneys working under BIA approved contracts is $65-$95 per hour and that non-BIA approved contract work performed by an attorney of similar skill and

experience in counsel's geographical area could command $100-$125 per hour. The attorney's affidavit stated that he estimated the customary fee for similar work in the area at $75-$125 per hour. Given that the attorney's own billing rates are apparently comparable to general rates charged for similar work, and that $70 per hour represents counsel's own valuation of his work ,we hold that the lodestar hourly rate in this case is $70.*

In calculating fees, the court should use the most objective figures possible in determining the lodestar rate. A rate of $70 per hour compensates the attorney in this case for his opportunity costs, but does not provide him with a congressionally prohibited windfall. As the majority in Laffey recognized, if the lodestar rate is determined from a range of rates even where more certain figures are available, the fee calculation "merely mimics—rather than provides—mathematical objectivity." *Laffey*, 746 F.2d at 19. In many cases, the attorney's own billing rate will not provide the reliable measure such rates provide in this case where the attorney has hourly rates consistent with those charged in the community and specializes in the area of law which is the subject matter of much of the lawsuit. Absent these characteristics, the courts must rely more heavily on prevailing community rates for similar services than on the attorney's own billing rate. Further, the lodestar is not a cap on the fee award. The figure can still be adjusted upward or downward according to the subjective factors listed in *Johnson*.

As the district court noted, counsel represented the Community with considerable skill. We believe, however,

*We do not base the lodestar rate on the BIA approved contract rate, because such contracts do not necessarily reflect the amount the attorney commands for identical services absent the need for BIA approval.

that a $70 per hour rate adequately compensates the attorney for his efforts. We thus reduce the amount of attorneys' fees to reflect a rate of $70 per hour, and award a total of $12,253.31 to the Community in attorneys' fees, calculated as follows:

1.	171 x 70.00 per hour =	$11,970.00
2.	2.9 x 30.00 per hour =	87.00
3.	Expenses incurred =	196.31
	Total =	$12,253.31

Conclusion

We affirm the district court's order declaring the residents of the Shakopee Mdewakanton Sioux Reservation residents of the City of Prior Lake, Minnesota, permanently enjoining the City of Prior Lake from providing Reservation residents with municipal services on a different basis than that upon which services are provided other Prior Lake citizens and further enjoining Prior Lake from preventing qualified Reservation residents from participating in Prior Lake elections. We also affirm the district court's dismissal of Prior Lake's counterclaim and the court's award of attorney's fees to the Community. We reverse the district court's order awarding attorney's fees in the amount of $17,383.31, and reduce the fee award to $12.253.31.

Costs on appeal should be awarded to the Community.

So ordered.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

DISTRICT OF MINNESOTA
THIRD DIVISION

CIVIL CASE NO: 3-83-1059

DATE NOTICE MAILED: 8-31-84

SHAKOPEE MDEWAKANTON SIOUX,

Plaintiff,

vs.

CITY OF PRIOR LAKE,

Defendant.

CLERK'S NOTICE UNDER RULE 77 (d), Federal Rules of Civil Procedure

You are hereby notified that on this date, 8-31-84, the following was filed in the above-entitled action:

ORDER (Magnuson-J) IT IS ORDERED AND ADJUDGED: That the residents of the Shakopee Mdewakanton Sioux Indian Reservation are residents of the City of Prior Lake, Minnesota, and as such are entitled to all of the rights which attend such citizenship. The city is permanently enjoined from preventing residents, who otherwise qualify as eligible voters, from fully participating. The city counterclaim is dismissed. The pltff. be awarded costs and atty. fees.

FRANCIS E. DOSAL, CLERK
By /s/ Phil Scott
Deputy Clerk

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Shakopee Mdewakanton Sioux Community and Edith Crooks,

Plaintiffs,

and

The United States of America,

Plaintiff-Intervenor,

v.

City of Prior Lake, Minnesota, et al,

Defendants.

Civil File No. 3-83-1059

MEMORANDUM ORDER

John E. Jacobson, Attorney for Plaintiffs Shakopee Mdewakanton Sioux Community and Edith Crooks.

Robert S. Berman, Department of Justice Attorney, for Plaintiff-Intervenor United States of America.

Phillip A. Cole and Martin A. Cole, Attorneys for defendant City of Prior Lake.

This is an action for declaratory and injunctive relief, attorneys fees, and costs under the Voting Rights Act of 1965, 42 U.S.C. §§ 1971 (a) (1) and 1971 (a)(2)(A) (1982); the Voting Rights Act Amendments of 1982, 42 U.S.C. § 1973 (a) (1982). the Fourteenth Amendment to the Constitution of the United States of America; the Civil Rights Act of 1871, 42 U.S.C. § 1983 (1982); and the Indian Reorganization Act of 1934, 25 U.S.C. § 465 (1982). The plaintiffs seek a declaratory judgment that residents of the Shakopee Mdewakanton Sioux Indian Reservation are residents of the City of Prior Lake, Minnesota and as such, are entitled to all of the rights which attend such citizenship. Plaintiffs also seek an order permanently enjoining the City of Prior Lake from preventing Reservation residents, who otherwise qualify as eligible voters, from fully participating in the City's elections and from providing municipal police, fire and rescue services to the Reservation in a different manner or on a different basis from which such services are provided to other citizens of the City of Prior Lake.

The City of Prior Lake has filed a Counterclaim for a declaratory judgment that if Reservation residents are found to be residents of Prior Lake that the Reservation residents are subject to all laws, ordinances and regulations of the City of Prior Lake and all laws of the State of Minnesota and the United States. The City further requests that the court permanently enjoin the Reservation residents from violating such laws, ordinances and regulations. Plaintiffs have moved to dismiss this Counterclaim.

This lawsuit was precipitated by the July 18, 1983 passage of Resolution number 83-18 by the City Council of Prior Lake which revised the boundaries of the City's election precincts. Precinct No. 2 was drawn to explicitly exclude the Reservation lands which would otherwise lie within the exterior boundaries of this precinct. By Order dated September 23, 1983, as amended, the court preliminarily enjoined the implementation of the provision of Resolution number 83-18 which excluded the Reservation from the Second election precinct, and which, in effect, would have precluded eligible Reservation residents from participating in the City's municipal elections. The court declined to grant preliminary relief mandating the City to provide municipal services to the Reservation on the same basis as provided to other residents in the absence of any evidence that the City intended to cease performance under a contract for such services between the City and the Community's commercial bingo enterprise. Persons of any race or creed living on the Reservation lands except as provided in the court's September 23, 1983 Order are presently denied municipal citizenship by the City of Prior Lake.

The parties have submitted this action for resolution on stipulated facts. The court adopts and incorporates the Stipulation of Facts of record into this Memorandum Order.

In 1972 the City of Prior Lake annexed a portion of the territory formerly comprising Eagle Creek Township pursuant to the Minnesota Annexation Statute, Minn. Stat. § 414.031. The threshold issue in this suit is whether the 1972 annexation of the lower portion of Eagle Creek Township by the City of Prior Lake encompassed the Shakopee Mdewakanton Sioux Community Reservation lands.

The City concedes in its brief that if the Reservation lands are properly within the municipal boundaries of Prior Lake that residents of the reservation are entitled to vote in City elections and to all other benefits of citizenship on an equal, non-discriminatory basis.

It is the City's position that the Reservation lands were not annexed to the City of Prior Lake in 1972. First, the City contends that there is insufficient evidence in the stipulated record to establish that the Reservation lands were part of the Eagle Creek Township political unit at the time of the 1972 annexation. Secondly, the City contends that even if the Reservation lands were part of Eagle Creek, the City was not empowered under either Minnesota law or federal law in 1972 to annex the tribal lands absent express consent of the federal government or the Shakopee Mdewakanton Sioux Community.

The court finds that the Reservation lands were part of the Eagle Creek Township political unit at the time of the 1972 annexation.

The lands in issue comprising the Reservation were ac-

quired by the United States in 1890 and 1891. (Stipulation, ¶ 8). These lands consist of three parcels in sections 22, 28, 33 and 34, Township 115 North, Range 22 West, Scott County, Minnesota. (Stipulation ¶ 8 and 14; Exhibit 2). Title to these lands has been held in trust by the United States for the Shakopee Mdewakanton Sioux Community since their acquisition. (Stipulation ¶ 8).

The Township of Eagle Creek and its boundaries within Scott County, Minnesota have been established since 1870. (Stipulation, ¶ 2). As a result of the 1972 annexation proceedings Eagle Creek Township was divided between the City of Shakopee and the City of Prior Lake and ceased to exist as a governmental unit. (Stipulation, ¶ 11.) Shakopee annexed approximately the northern half of Eagle Creek Township and the Village of Prior Lake annexed the lower or southern half of Eagle Creek Township. (*Id.*)

The 1972 annexation proceedings are summarized by the Findings of Fact, Conclusions of Law and Order dated October 26, 1972 of the Municipal Commission of the State of Minnesota. (Stipulation Exhibit 1). The description of lands lying within Eagle Creek Township ordered to be consolidated into the newly consolidated City of Prior Lake is contained in Finding Number 4 of the October 26, 1972 Order. (*Id.* at p. 3). The lands which comprise the Reservation are included within the portion of Eagle Creek Township which the Commission ordered to be consolidated into Prior Lake. The description in Finding Number 4 makes specific reference to the northern boundary of one parcel of the Reservation lands as forming a portion of the northern boundary of the lower portion of Eagle Creek to be annexed to Prior Lake. The description

in Finding Number 4 corresponds with the map attached as Exhibit 2 to the Stipulation which the parties acknowledge correctly depicts the current boundaries of Prior Lake and the Reservation. (Stipulation, ¶ 14).

The record demonstrates that the Reservation lands lay within the physical boundaries of Eagle Creek at the time of the 1972 annexation proceedings and are within the current boundaries of the City of Prior Lake as depicted in Exhibit 2.

All members of the Shakopee Mdewakanton Sioux Community became citizens of the United States of America in 1924 with the passage of 8 U.S.C. § 1401 (1976). By virtue of this, the Community members became citizens of the State and any subdivision of the State where they reside. *See Goodluck v. Apache County*, 417 F .Supp. 13, 14-15 (D. Ariz. 1975) (affirmed without opinion, 429 U.S. 876 (1976). The City admits that the Reservation residents are legal residents of the State of Minnesota and Scott County and may and do vote in elections at this level. (City Brief, p. 18).

However, the City appears to argue that because the Reservation lands in issue were regarded as sovereign territory when acquired by the United States in 1890 and 1891 and because this occurred at a time when the Community members were not U. S. citizens, the Reservation lands remained sovereign enclaves within Eagle Creek and were not legally part of the Eagle Creek Township in 1972. This argument has no merit and appears at odds with the City's admission that the Community members are legal residents of the Scott County political unit and the State of Minnesota. When the United States acquired the Reservation lands and assumed jurisdiction, the lands

did not cease to be a part of Minnesota, Scott County or Eagle Creek Township. The geographic structures remained the same. This fiction of a state within a state has been expressly rejected by the United States Supreme Court. *See Howard v. Commissioners of Sinking Fund,* 344 U.S. 624, 626-627 (1953); *Evans v. Cornman,* 398 U.S. 419 (1970).

The fact that lands located within a municipality's or township's geographic boundaries are purchased in trust by the United States for Native Americans with accompanying restrictions on a city's power to tax or otherwise regulate the activities of these citizens, does not remove such lands from being a proper part of the City or entitle the City to treat residents of such lands differently from other municipal citizens. *See Chase v. McMasters,* 573 F.2d 1011 (8th Cir. 1978), *cert. denied* 439 U.S. 965 (1978).

The fact that there was a period of time up to 1924 when the Community residents of the Reservation may not have been eligible to participate in state, county or township elections does not preclude legal residency in Eagle Creek Township in 1972 prior to the effective date of the annexation order any more than it precludes legal residency in Scott County or in Minnesota. *See Goodluck v. Apache County, supra,* and *Little Thunder v. State of South Dakota,* 518 F.2d 1253 (8th Cir. 1975).

The City's second argument is two-fold. First the City argues that Reservation lands are not eligible for annexation under Minnesota law unless such lands are properly capable of being subjected to city government. The City contends that absent express tribal consent to be subjected to certain fundamental areas of municipal regulation such lands are not capable of properly being subjected to city government.

Plaintiff, Shakopee Mdewakanton Sioux Community, is a federal recognized Indian Tribe, organized under the provisions of the Indian Reorganization Act of 1934, 25 U.S.C. § 476 (1976) (Stipulation, ¶ 18).

In general, a state's jurisdiction may not be extended to tribal Indians on an Indian reservation located within the geographical boundaries of the State except where Congress has expressly provided that state law should apply. *McClanahan v. Arizona State Tax Comm'n.*, 411 U.S. 164, 170-172 (1973). Accordingly, the jurisdictional authority of the City of Prior Lake to implement the regulatory powers granted to it by the State of Minnesota over members of the Shakopee Mdewakanton Sioux Community residing on the Reservation depends upon whatever jurisdiction has been extended to the State of Minnesota by the federal government.

Public Law 280 granted certain states, including Minnesota, criminal jurisdiction with respect to crimes involving Indians. 18 U.S.C. § 1162. In addition, section 4 of Public Law 280, codified at 25 U.S.C. § 1360, granted civil jurisdiction to the State of Minnesota in actions to which Indians are parties with respect to "[t]hose civil laws that are of general application to private persons or private property. . . ." § 1360 (a). Exemptions to this grant of civil jurisdiction to the State are stated in section 4 (b) of Public Law 280. 28 U.S.C. § 1360 (b). Title IV of the Civil Rights Act of 1968, Pub. L. 90-284, 25 U.S.C. §§ 1321-26, amended Public Law 280 to require Tribal consent as a condition to other states assuming the jurisdiction provided in 18 U.S.C. § 1162 and 28 U.S.C. § 1360.

The United States Supreme Court's decision in *Bryan v.*

Itasca County, 426 U.S. 373, (1976) clarified that the grant of civil jurisdiction in § 4 of Public Law 280 did not confer upon the states general civil regulatory powers over Native Americans residing on Reservation lands. *See* discussion *infra*. Thus, it is clear that the City of Prior Lake does not have the authority to tax or in many other respects exercise its municipal civil regulatory powers over the Reservation lands and its tribal residents.

Minnesota's municipal annexation statute, Minn. Stat. § 414.031, is silent on the annexation of federal lands or Indian lands held in trust by the federal government.

Defendant relies on the case of *State v. City of White Bear Lake*, 255 Minn. 28, 95 N.W.2d (294) (1959) as impliedly conditioning the power to annex the Reservation lands in issue under Minnesota law on the jurisdictional authority of the City to implement its fundamental regulatory power over these lands. In *State v. City of White Bear Lake*, the Minnesota Supreme Court held that a prerequisite to annexation is that the annexed territory *as a whole* be so conditioned as to be subjected to city government. (Emphasis added). 95 N.W.2d at 299. The test for determining whether territory to be annexed as a whole meets this condition was held to embrace three basic essentials: "(1) that the platted portion of the lands contains a compact nucleus of population, (2) that the adjacent unplatted lands are suburban in character, and (3) that the unplatted lands have with the platted portions of the annexing city a unit of interest in the maintenance of a city government." *Id.* The annexation in issue was accomplished pursuant to Minn. Stat. § 414.031. Subdivision 4 of § 414.031, prior to its amendment in 1978, required the Municipal Commission to make certain findings as to cer-

tain factors before it could order annexation. Those factors include the ones listed in the *White Bear* case plus a number of additional ones.

The Findings of Fact, Conclusions of Law and Order of the Municipal Commission of the State of Minnesota dated October 26, 1972 appears to comport in all respects with the requirements of Minn. Stat. § 414.031. Defendant did not appeal the annexation as invalid at the time. It does not challenge the proceedings as failing to comport with the necessary procedural requirements of the Minnesota Annexation laws. It does not at this time challenge per se the Findings made by the Commission. The court finds no basis for invalidating the 1972 annexation on the basis that it failed to comport with the State of Minnesota's annexation laws.

Secondly, the City argues that even if Minnesota law did not preclude the City's annexation of the Reservation lands in 1972, federal law required either congressional or tribal consent as a condition precedent to application of the State's annexation laws to the Reservation lands. The parties have stipulated that Prior Lake and the tribe did not consult regarding the annexation procedure. (Stipulation, ¶ 12).

The City argues that the United States Supreme Court's interpretation of Public Law 280 in *Bryan v. Itasca County*, 426 U.S. 373 (1976) and Title IV of the 1968 Civil Rights Act, 25 U.S.C. §§ 1321-26, in amending Public Law 280, prohibits annexation of Indian lands held in trust by the United States, absent prior tribal consent.

In *Bryan v. Itasca* the United States Supreme Court reversed the Minnesota Supreme Court's holding that Public Law 280 constituted congressional consent for the State's

exercise of its civil jurisdiction to levy personal property taxes on non-trust property located on a reservation. The United States Supreme Court held that § 4 of Public Law 280 did not confer upon the states general civil regulatory powers, such as taxation, 426 U.S. at 384, 390. Rather, the grant of civil jurisdiction in Public Law 280 conferred state court jurisdiction to adjudicate private civil causes of action involving Indians. 426 U.S. at 385. The court found its interpretation of the grant of civil jurisdiction in § 4 of Public Law 280 consistent with Title IV of the 1968 Civil Rights Act, which repealed § 7 of Public Law 280, to require tribal consent as a condition to other states assuming the jurisdiction provided to specified states in 18 U.S.C. § 1162 and 28 U.S.C. § 1360. The Court noted that the legislative history of Title IV made it difficult to construe § 4 jurisdiction obtained pursuant to Title IV as conferring general civil regulatory powers. The Court found it would be inconsistent to construe the grant of civil jurisdiction differently depending upon when and how a state acquired such jurisdiction. 426 U.S. at 386-387.

The City argues that under the authority of *Bryan v. Itasca County* and the Court's interpretation of Title IV of the 1968 Civil Rights Act, the annexation of the Reservation lands in 1972 in the absence of prior express Tribal consent was an impermissible extension of the State's jurisdiction over the Reservation and its residents.

The court does not agree. The 1972 annexation had no effect on any restrictions placed by federal law on local and state interference with Native American affairs and land.

It is clear that federal lands may be annexed by a municipality pursuant to a state's annexation laws. *Howard v.*

Commissioners of Sinking Fund, 344 U.S. 624, 626-627 (1953) (regarding annexation of naval plant); *United States v. Bellevue*, 334 F. Supp. 881 (D. Neb. 1971), *aff'd* 474 F.2d 473 (8th Cir.) *cert. denied* 414 U.S. 827 (1973) (regarding annexation of air force base). A change in municipal boundaries created by annexation does not affect the exclusive jurisdiction of the United States within the area. Exclusive jurisdiction over the area remains with the United States, except as modified by federal law. *Howard v. Commissioners of Sinking Fund*, 344 U.S. at 627.

While the *Howard* case did not pertain to the annexation of Indian lands held in trust by the federal government, the court does not find that the holding in *Bryan v. Itasca County* or Title IV of the 1968 Civil Rights Act created prior tribal or congressional consent as a special requirement for annexation of Indian trust lands as the City contends.

First of all, the Court in *Bryan v. Itasca* simply observed that Title IV of the Civil Rights Act of 1968, 25 U.S.C. §§ 1321-1326 repealed § 7 of Public Law 280 which had permitted other states not explicitly given the grants of jurisdiction in 18 U.S.C. § 1162 and 28 U.S.C. § 1360, to assume this jurisdiction without tribal consent. Title IV changed this procedure to require Tribal consent before other states could assume such jurisdiction. 426 U.S. at 386-387. *See also McClanahan v. Arizona State Tax Comm'n.*, 411 U.S. at 177, n. 17. The court does not see the amendment's relevance to this particular suit. There is no dispute that the Reservation lands in issue are included within the explicit grant of jurisdiction to the State of Minnesota in the original act.

Secondly, application of Minnesota's annexation laws to the Reservation lands in issue is not antagonistic to the construction of Public Law 280 in *Bryan v. Itasca County*. The 1972 annexation did not in any manner interfere with or affect the plenary and exclusive power of the federal government to deal with the Reservation and its residents. The annexation had no impact on Tribal self-government. It had no impact on the extent to which the Reservation and its residents could or could not be subjected to the State's civil jurisdiction or regulatory powers.

The City has also brought to the court's attention 25 C.F.R. § 1.4, which was in effect in 1972 and which pertains to state and local regulation of the use of Indian property. The regulation in general precludes a state or its political subdivisions from approving any laws, ordinances, or regulations which limit, zone or otherwise govern, regulate or control Indian lands. The City argues that Minnesota's Annexation Statute, Minn. Stat. § 414.031 is a statute governing land use which was prohibited from being applied to any Indian lands in 1972. The court does not find that Minn. Stat. § 414.031 is a land use statute within the prohibition of 25 C.F.R. § 1.4. The court concurs with plaintiffs that it is simply a civil mechanism by which the boundaries of Minnesota's political subdivisions may be adjusted.

The City cites no treaty or other federal law dealing with Indian affairs which it contends would be impaired by the 1972 annexation of the Reservation lands.

The City appears to argue that the federal preemption analysis utilized in *McClanahan v. Arizona State Tax Comm'n.*, 411 U.S. at 170-171 precludes application of any state law unless there has been express tribal or federal consent to its application.

The court does not agree. "Enactments of the federal government passed to protect and guard its Indian wards only affect the operation within the colony, of such state law as conflict with the federal enactments." *Moe v. Confederated Salish & Kootenai Tribes,* 425 U.S. 463, 483 (1976) quoting *United States v. McGowan,* 302 U.S. 535, 539 (1938).

Subsequent to the *McClanahan* and *Bryant v. Itasca County* decisions, the Eighth Circuit has stated that outside the special area of taxation, state and local law may be applied to Reservation lands unless "(1) it frustrates or interferes with tribal self-government, or (2) it impairs a right granted or reserved by federal law." *Chase v. Mc Masters,* 573 F.2d 1011, 1018 (1978) citing *Moe v. Confederated Salish & Kootenai Tribes, supra,* 425 U.S. at 483.

It should be reiterated that the Shakopee Mdewakanton Sioux Community does not contend that the 1972 annexation in any manner impedes tribal self-government under its constitution (Stipulation, Exhibits 5 and 6) adopted pursuant to the Indian Reorganization Act of 1934, to 25 U.S.C. § 476 (1976) or impairs any rights granted by federal law.

The court does not find that federal law requires that the 1972 annexation of the Reservations lands in issue be set aside. The 1972 annexation simply readjusted the geographic boundaries of the City of Prior Lake in accord with the requirements of Minnesota"s annexation laws. It did not frustrate tribal self government or conflict with any congressional enactment dealing with the affairs of reservation Indians of which the court is aware.

The court finds that the Reservation lands are properly

within the municipal boundaries of the City of Prior Lake. Under these circumstances the City concedes that the residents of the Reservation are entitled to vote in City elections and to all other benefits of citizenship on an equal, non-discriminatory basis.

The court will dismiss the City's Counterclaim. In its Counterclaim, the City's prayer requests that if the Reservation lands are found to be properly within the municipal boundaries of the City of Prior Lake that the court adjudge that all laws and ordinances of the City and State are applicable to the Reservation and its residents and to permanently enjoin Reservation residents from violating such laws, ordinances and regulations. The City in general references bingo laws, laws regarding the burning of trees on the reservation and laws regarding the licensing and sale of cigarettes on the reservation in its Counterclaim but makes no reference to specific laws or conduct of the plaintiff. The City has not addressed its Counterclaim in its trial brief.

The court cannot rule on the merits of the City's counterclaim in the absence of allegations of specific laws, ordinances and regulations which the City seeks to enforce.

It is clear under *Bryant v. Itasca City, supra*, and progeny that the Reservation lands and the Community members residing on the Reservation are not subject to many of the State and City's civil regulatory powers, including its taxing powers. *See also City of Sault Ste. Marie Michigan v. Andrus*, 532 F. Supp. 157 (D.D.C. 1980) (City's land use ordinances held not to apply to City and purchased in trust for Reservation residents); *Oneida Tribe of Indians of Wisconsin v. State of Wisconsin*, 518 F. Supp. 712 (W. D. Wis. 1981) (operation of bingo games

not subject to local regulation); *Moe v. Confederated Salish & Kootenai Tribes, supra,* 425 U.S. at 483 (1976) (state vendor license fee and cigarette sales tax inapplicable to on-reservation sales by Indians to Indians).

The plaintiffs have requested attorney fees pursuant to 42 U.S.C. § 1973 1 (e) and 42 U.S.C. § 1988. Both of these provisions which authorize an award of attorney fees to a prevailing party should be construed similarly. *Riddell v. National Democratic Party,* 624 F.2d 539, 543 (5th Cir. 1980).

The test for determining whether a litigant is a prevailing party is a pragmatic one that focuses on whether the litigant has substantially achieved the result sought or has been successful on a crucial issue. *Connor v. Winter,* 519 F. Supp. 1337, 1340 (D. C. Miss. 1981). The focus is not on whether the plaintiffs prevailed on each legal theory but rather whether they "essentially succeeded" in their claim against the underlying conduct. *Grand Blvd. Imp. Ass'n. v. City of Chicago,* 553 F. Supp. 1154, 1167-1168 (D. C. Ill. 1982).

The court finds that the plaintiffs are prevailing parties under § 1988 and § 1973 1 (e). Even though the City has characterized this suit as a boundary dispute, it is clear that the Reservation lands and its residents were excluded from the City's election precincts in 1983 and provided services on a different basis primarily because of the unique status accorded to American Natives residing on Reservation lands. The fact that all persons residing on the Reservation were denied citizenship does not alter this result. For over a decade the City did nothing to attack the validity of the 1972 annexation. At this date it has done so in response to a challenge to the City's revision

of its election precincts. While the court did not have to reach the issues of whether the City's actions violated the Voting Rights Act or 42 U.S.C. § 1983, given the City's concession in their brief, it seems clear that without plaintiffs pursuing this action important fundamental rights protected by these enactments would have been denied to plaintiffs due to their status as Native Americans residing on Indian trust lands.

Although an award of fees is within the court's discretion, a successful litigant should ordinarily recover fees unless special circumstances would render an award unjust. *Riddell v. National Democratic Party*, 624 F.2d at 543. The special circumstances exception has been narrowly construed. *Id.* at 543-545. Generally, the exception has been found to exist where the suit was in essence a private state law tort suit for damages or where the plaintiff's efforts did not contribute to the benefits sought in the law suit. *Id.* This suit does not come within such special circumstances. Significant public benefit has been achieved by the plaintiffs' efforts.

Accordingly, the court will grant attorney fees to plaintiffs. Plaintiffs are directed to file with the court on or before September 21, 1984 affidavits in support of attorney fees. Defendants will be given until September 30, 1984 to submit a response to the fees requested.

Based upon the foregoing,

IT IS ORDERED AND ADJUDGED:

1. That the residents of the Shakopee Mdewakanton Sioux Indian Reservation are residents of the City of Prior Lake, Minnesota, and as such are entitled to all of the rights which attend such citizenship.

2. That the City of Prior Lake is permanently enjoined from preventing Reservation residents, who otherwise qualify as eligible voters, from fully participating in the City's elections and from providing municipal services, such as police, fire and rescue services, to the Shakopee Mdewakanton Sioux Indian Reservation and its residents in a different manner or on a different basis from which municipal services are provided to other citizens of the City of Prior Lake.

3. That the City of Prior Lake's counterclaim is dismissed.

4. That plaintiffs be awarded costs and attorney fees.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: August 31, 1984.

/s/ Paul A. Magnuson
United States District Judge

UNITED STATES DISTRICT COURT
DISRICT OF MINNESOTA
THIRD DIVISION

Shakopee Mdewakanton Sioux Community and Edith Crooks,

Plaintiffs

and

The United States of America,

Plaintiff-Intervenor

v.

City of Prior Lake, Minnesota et al.,

Defendants.

STIPULATION OF FACTS

Civil Action No. 3-83-1059

The parties, by and through their attorneys, hereby stipulate that the following facts are true and shall comprise the evidentiary record in this matter:

1. Eagle Creek Township was first settled in or around 1847 by Reverend Samuel Pond, a missionary to the Dakota Indians. Scott County was established by act of the Minnesota Territorial Legislature on March 5, 1853.

2. Boundaries of Scott County, which included Eagle Creek Township, have not changed since Minnesota attained statehood in 1858. The township boundaries had remained unchanged since 1870, when the City of Shakopee was incorporated.

3. The history of the Shakopee Mdewakanton Sioux Indian Community is discussed in detail in *Mdewakanton and Wahpakoota Bands of Sioux Indians, etc. v. United States,* 57 Ct. Cls. 357 (1922) in the first third of the nineteenth century, the Mdewakanton Band of Sioux Indians was one of four Sioux bands which occupied the southern third of what was to become the State of Minnesota. By a series of treaties with the United States, these Sioux bands ceded to the United States all of their lands in Minnesota. The first such treaty was that of September 29, 1837, 7 Stat. 538, which ceded all of the band's lands east of the Mississippi River, in consideration of monetary payments.

4. The next treaty affecting the Mdewakanton Band was that of August 5, 1851, 10 Stat. 954, which ceded all of their rights to the lands of Minnesota; in the third article of the treaty, the government of the United States agreed to survey and set apart for the Mdewakantons and one other Sioux band a reservation consisting of the land on the sides of the Minnesota River, beginning near present-day New Ulm, and running into what is now South Dakota. However, the Congress of the United States refused to ratify this third article.

5. Therefore, on June 19, 1858, a third and final treaty was signed with the Mdewakantons, and ratified in full by Congress. The United States was to create a reservation for the Mdewakanton Band and another band on the south side of the Minnesota River. This final treaty appears at 12 Stat. 1031.

6. After the Sioux Uprising in 1862, the Congress of the United States abrogated its obligation to create the

reservation contemplated by the 1858 treaty by the Act of February 6, 1863, 13 Stat. 652. Thereafter, the Sioux Indians who formerly resided in Minnesota, including most of the members of the Mdewakanton Band, were removed to reservations in what were to become the States of South Dakota and Nebraska.

7. In the latter part of the nineteenth century there were several scattered Sioux communities in Minnesota. These communities consisted of members of the Mdewakanton Band who were not removed from Minnesota, and those who had been removed but had returned to the state. One of these communities was near the present area of metropolitan Minneapolis and St. Paul.

8. In 1890 and 1891, the Office of the Commissioner of Indian Affairs of the United States purchased three parcels of land to create a reservation for the Sioux community located near Minneapolis and St. Paul.

a. The South half of the Northwest quarter, and the North half of the Southwest quarter, Section 22, Township One Hundred and Fifteen North, Range Twenty-two West, except one and three-quarters acres in the Southwest corner of the North half Southwest quarter was acquired by the United States of America on June 4, 1890, by a warranty deed recorded on September 27, 1890 in the records of Scott County at Volume N2 of Deeds, page 198 (Parcel 1 on Exhibit 2);

b. A parcel described by metes and bounds in the same township and range, which contained ten acres of land, more or less, was acquired on April 19, 1890 by the United States of America from an Indian, Ye

kow to e che a, also known as John Bluestone, by a warranty deed recorded in the records of Scott County on September 27, 1890 at Volume N2 of Deeds, page 199 (Parcel 2 on Exhibit 2); and

c. The Northeast quarter of the Southwest quarter, Section Twenty-eight, and the North fifty acres of the East half of the Northeast quarter, Section Thirty-three, in the same Township and Range, was acquired by the United States on May 1, 1891, by a warranty deed recorded in the records of Scott County on September 3, 1891, at Volume N2 of Deeds, page 396 (Parcel 3 on Exhibit 2).

Since these parcels were acquired, title to them has been held by the United States of America, in trust for the band. At this time they comprise the Shakopee Mdewakanton Sioux Indian Reservation, and they are administered under the provisions of Public Law 96-557, 94 Stat. 3262 (December 19, 1980).

9. On September 1, 1982, the United States of America acquired in trust an additional parcel of land, by conveyance from the Shakopee Mdewakanton Sioux Community. This parcel of land has not yet been declared to be part of the Shakopee Mdewakanton Sioux Indian Reservation.

10. All members of the Shakopee Mdewakanton Sioux Indian Community became citizens of the United States of America in 1924, by virtue of the provisions which appear at 8 U.S.C. § 1401 (1976).

11. In 1972, the City of Shakopee and the then Village of Prior Lake initiated proceedings, pursuant to Min-

nesota Statutes Chapter 414, to annex portions of Eagle Creek Township. The township was divided between the two communities and ceased to exist as a governmental unit. The City of Shakopee annexed approximately the upper, or northern, half of the township and the Village of Prior Lake annexing the lower or southern half. The proceedings of the Annexation Commission are attached as Exhibit 1.

12. The Village, later City, of Prior Lake, and the leaders of the Shakopee Mdewakanton Sioux Community did not consult regarding the annexation procedure.

13. The findings of the Minnesota Municipal Commission set forth the metes and bounds description of the land annexed to Prior Lake by the procedures described in paragraphs 11 and 12, above. The proceedings of the Commission are attached as Exhibit 1.

14. The map attached hereto as Exhibit 2 correctly illustrates the current boundaries of the City and the Shakopee Mdewakanton Sioux Indian Reservation.

15. Residents on Parcels 1, 2 and 3 do not receive any municipal services from the City of Prior Lake. The City, however, provides fire and rescue services to the tribal bingo operation ("Little Six Bingo Palace") and the reservation residents under a "Fire and Rescue Agreement" signed September 20, 1982, with the Bingo Palace's private management firm. The Agreement is attached as Exhibit 3 and remains in force.

16. On July 18, 1983, in response to the growing voting population of the City of Prior Lake, the City Council of Prior Lake passed Resolution 83-18, which

redrew the election precinct boundaries within the City, creating three precincts instead of the former two precincts. This was done in order to ease the time and distance involved for voting in municipal elections. The Resolution is attached as Exhibit 4. Precinct No. 2 was drawn explicitly excluding the land of the Shakopee Mdewakanton Sioux Community Reservation, which would otherwise lie within the exterior boundaries of this voting precinct. Persons of any race or creed living on the reservation parcels except as provided in the preliminary injunction issued by this Court on September 23, 1983, are presently denied municipal citizenship by the City of Prior Lake.

17. Prior Lake denies municipal citizenship to all persons not residing within the City.

18. At all times pertinent to this litigation, the Reservation has been governed by a federally recognized Indian Tribal Government, organized under the provisions of the Indian Reorganization Act of 1934, 25 U.S.C. § 476 (1976). The Shakopee Mdewakanton Sioux Tribal Government exercises its authority by virtue of the Constitution attached hereto as Exhibit 5. The Constitution was amended in 1970, and that Amendment is attached as Exhibit 6.

Dated this 4th day of March, 1984.

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EXHIBIT 1

C9-mt Prior Lake—Eagle Creek Township

BEFORE THE MUNICIPAL COMMISSION
OF THE STATE OF MINNESOTA

Robert W. Johnson	Chairman
Robert J. Ford	Vice Chairman
Harold J. Dahl	Member
William Koniarski	Ex-Officio Member
Marvin Oldenburg	Ex-Officio Member

IN THE MATTER OF THE PETITION AND RESOLUTION FOR THE CONSOLIDATION OF THE VILLAGE OF PRIOR LAKE AND THE TOWN OF EAGLE CREEK

AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

The above entitled matter, designated by the Commission as Docket C9-mt was initiated by a petition of more than 100 property owner residents of the Town of Eagle Creek and a resolution of the Village of Prior Lake. Said petition and resolution were received by the Commission on September 17, 1971. On September 27, 1971, the Commission received a communication advising of additional signers of the petition.

The Scott County Board of Commissioners appointed Commissioners William Koniarski and Marvin Oldenburg as ex-officio members of the Minnesota Municipal Commission for the purposes of this proceeding.

The matter came on for hearing on October 28, 1971

and December 20, 1971 at the Prior Lake Village Hall. Appearances were entered by Mark Sullivan. Attorney for the Village of Prior Lake; Julius Coller, Attorney for the City of Shakopee and certain residents of the Town of Eagle Creek, Daniel John O'Connel. Attorney for the Town of Eagle Creek, and Russel H. Larson. Attorney for Walter Jobst and members of the Eagle Creek Association. Walter Jobst also appeared on his own behalf.

Evidence was taken and testimony heard from all those appearing and indicating a desire to be heard. Certain exhibits were received in evidence. It was made to appear that a petition for the annexation of certain territory within the Town of Eagle Creek to the City of Shakopee would be filed with the Commission in the near future, and that the Village of Prior Lake had, by resolution, approved of such annexation.

On January 5, 1972, the Commission received a petition for the annexation of certain property within the Town of Eagle Creek to the City of Shakopee, and a resolution of the City of Shakopee approving of the proposed annexation.

The Commission having carefully considered all of the evidence included in all of the testimony and exhibits, being fully advised in the premises, upon all files, records, and proceedings herein, hereby makes and enters the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. The petition of certain freeholders of Eagle Creek and the resolution of the Village of Prior Lake for the consolidation of the south half of Eagle Creek Township with the Village of Prior Lake to form a new Village of

Prior Lake were filed pursuant to and in compliance with the Minnesota Statutes, Chapter 414, and said petition and resolution were, in all respects, proper in form, contents, execution and filing.

2. Notice of Hearing on the petition and resolution was duly given as required by statute. The Commission duly convened, by lawful quorum at the scheduled hearing and at all adjourned or continued hearings. All parties of record were present at and participated in the hearings and they and all parties desiring to be heard were so heard.

3. The area proposed by the petition and the resolution to be consolidated as the new Village of Prior Lake is the entire area of the existing Village of Prior Lake and the entire area of the Town of Eagle Creek, more particularly described as follows.

> All that part of Township 115 N, Range 22 W lying south of the following described line:
>
> Beginning at the point of intersection of the Westerly line of T115N, R22W and the East to West 1/4 line of Section 19, T115N, R22W, thence running easterly through Sections 19, 20, and 21 to the east line of Section 21, thence northerly on said east line 1/4 mile to the north line of Indian Reservation, thence in an easterly direction on said north line of said Reservation 1/2 mile to the north and south quarter line, thence south 1/4 mile to the east and west 1/4 line, thence east 1/2 mile to the east line of Section 22, thence north 1/4 mile, more or less to the south line of N 1/2 of the N 1/2 of Sec. 23, T115N, R22W,

thence east on said south line 1/2 mile to the north and south 1/4 line of Sec. 23, T115N, R22W, thence north 1/4 mile to the north line of Sec. 23, T115N, R22W, thence easterly 1/2 mile to the east line of said Sec. 23, T115N, R22W, thence south on said east line 1/2 mile, more or less, to the south line of north 1/2, Sec. 23, thence continuing easterly on the east and west 1/4 line of Sec. 24, to the east line of said section and there terminating.

4. The following described territory lying within the Town of Eagle Creek and the entire territory of the existing Village of Prior Lake are herein ordered to be the territory of a newly consolidated Village of Prior Lake.

That part of Eagle Creek Township lying Easterly and Southerly of the following described line: Beginning at the Southwest corner of the east 1/2 of Section 32, Township 115 N, Range 22 W; thence north on the west line of the east 1/2 to the north line of Section 32; thence east to the northeast corner of said Section 32; thence north on the east line of Sections 29 and 20 to the east and west 1/4 line of Section 21; thence east on said 1/4 line to the east line of Section 21; Thence northerly on said east line 1/4 mile to the north line of Indian Reservation, thence in an easterly direction on said reservation 1/2 mile to the north and south 1/4 line; thence south 1/4 mile to the east and west 1/4 line; thence east 1/2 mile to the east line of Section 22; thence north 1/4 mile, more or less, to the south line of N 1/2 of the N 1/2 of Section 23, T115N, R22W; thence east on said south line 1/2 mile to the north and south 1/4 line of

Section 23; thence north 1/4 mile to the north line of Section 23; thence east on said north line 1/2 mile to the east line of said Section 23; thence south on said east line 1/2 mile more or less to the south line of the north 1/2 of Section 23; thence continuing Easterly on the east and west 1/4 line of Section 24, T115N, R22W to the east line of said Section and there terminating.

5. A petition for the annexation of the following described territory situated in the Town of Eagle Creek to the City of Shakopee, and a resolution of said city approving of said proposed annexation, were filed with the Commission on January 5, 1972.

All of Sections 29, 30 and 31, the south one-half of Sections 19 and 20, and the west one-half of Section 32, Tll5N, R22W.

6. The territory described in Finding #5 is presently provided fire protection by the City of Shakopee.

7. Scott County State Aid Highway 17 is a major thoroughfare which interconnects the territory described in Finding #5 with the City of Shakopee.

8. On October 26, 1971, the commission received a resolution of the Village of Prior Lake, dated October 11, 1971, which resolved among other things that "the Village of Prior Lake will request the Minnesota Municipal Commission to exclude said property from the consolidation proceedings." The term "said property" refers to the territory described in Finding #5.

9. The natural drainage of the territory described in Finding #5 is toward the City of Shakopee.

10. The territory described in Finding #5 is adjacent to the City of Shakopee.

11. All of the territory described in Finding #5 is situated within the Shakopee School District.

12. The residents of the territory described in Finding #5 and the residents of the City of Shakopee share a strong community of interest.

13. The area of the Town of Eagle Creek Township described in Finding #4 is approximately 6.5 square miles. The area of Prior Lake Village is approximately 1-1/2 square miles.

14. Most of the Village of Prior Lake is platted and developed. There is extensive platted residential development within the Town of Eagle Creek surrounding Prior Lake consisting of high valuation homes. The bulk of the population of the remaining portion of Eagle Creek Township is centered in the area surrounding Prior Lake.

15. Prior Lake and Eagle Creek contain land used and suitable for residential, industrial, commercial, institutional and recreational purposes.

16. The Metropolitan Sewer Board has jurisdiction over the entire area herein under consideration under Minnesota Statute Chapter 449, Metropolitan Sewer Act. A comprehensive plan must be prepared for the area in question and approved by the Metropolitan Sewer Board and Metropolitan Council before construction of sewer facilities can be begun. Preparation of such a plan has

been made by the Village of Prior Lake for the Village of Prior Lake as well as the portion of the Town of Eagle Creek described in Finding #4.

17. The assessed valuation of Eagle Creek Township is approximately $1,000,000.00. The assessed valuation of the Village of Prior Lake is $645,000.00.

18. The mill rates for the Village of Prior Lake for the year 1980 was 80.4 and for the Township of Eagle Creek it was 15.95, and that the estimated mill rate for the projected new Village of Prior Lake after consolidation is 41.7. The bonded indebtedness of the Village of Prior Lake is $968,000.00.

19. That the Village of Prior Lake and that area of the Town of Eagle Creek described in Finding #4 have exhibited steady and continual growth in population. That the Village of Prior Lake has also exhibited growth in industry, commerce, education and construction. Existing businesses and industry have expanded. The Village of Prior Lake has an attractive and large new shopping center located in said Village which has expanded rapidly in the past several years. The Village of Prior Lake has within its boundaries a parochial grade school and public primary, junior high and senior high schools, all of which are relatively new. The Village of Prior Lake has an indoor swimming pool located in the new senior high school as well as other recreational facilities, baseball parks, football fields, hockey rinks and other recreational areas.

20. The Village of Prior Lake is bounded on its north side, by Eagle Creek Township; on the east by the Village of Savage; on the south by Credit River Township; and

on the west by Spring Lake Township. The Village of Prior Lake is presently served by railroad.

21. Testimony indicates that County Road #42, which lies parallel to the northerly line, but within the area of Eagle Creek proposed to be consolidated, is scheduled for upgrading as a major four-lane division highway.

22. State Trunk Highway #13 is scheduled to be rerouted to pass west of the present Village of Prior Lake and intersect with County Road #42 at a point to the northwest of the present existing village, and it is anticipated that this area and the area along County Road #42 will be a secondary focus of activity in the newly consolidated village and may in the future replace the existing village marketing area as the primary focus.

23. The proposed sanitary sewer interceptor will pass through the newly consolidated Village of Prior Lake in an area near County Road #21, running north and south to the Village of Prior Lake.

24. The anticipated commercial, residential and industrial development requires professional staff and administrative experience to provide the necessary municipal services and control. Such staff and experience are presently being provided by the Village of Prior Lake and can be expanded to meet the requirements of the new Village of Prior Lake as created herein.

25. There will be no change in the service provided by the school districts as the result of this consolidation, and the consolidation area follows generally, but not specifically, the school district boundary lines.

26. The Village of Prior Lake abuts the southern boundary line of Eagle Creek for the entire length of the northerly boundary line of said village.

27. The Lake of Prior Lake is bordered by both Eagle Creek, the Village of Savage, and the Township of Spring Lake. The land and surrounding land area should be kept within the minimum number of governmental jurisdictions to allow for unified land use and lake control.

28. The commercial and industrial developments that are projected to occur along County Road #42 will contribute to the ability and expansion of the Village of Prior Lake and provide the essential municipal services.

29. The residents of that portion of Eagle Creek described in Finding #4 have a strong community interest with the residents of the Village of Prior Lake.

30. The municipal services provided by the Village of Prior Lake could be economically expanded to meet the needs of the new community created herein. Consolidation will not adversely affect the adjacent villages and towns to provide their residents with adequate governmental services.

31. The new municipality created herein shall be named the Village of Prior Lake.

32. No part of the area of Eagle Creek herein ordered consolidated with the Village of Prior Lake would be better served by annexation to either the Village of Savage or the City of Shakopee.

33. Comprehensive development policies are required to control land surrounding the present Village of Prior

Lake to assure the orderly and economical expansion of the municipality on its perimeter, consistent with existing residential, commercial and industrial patterns.

34. The new Village of Prior Lake will have the ability to properly provide municipal services such as water and sewer in a more economical, feasible manner than would the Town of Eagle Creek.

35. The Village of Prior Lake is presently providing fire service, through contract with the Town of Eagle Creek for virtually the whole area being consolidated herein, and will readily be able to expand the police department to provide police service to this area.

36. The new Village of Prior Lake will have the fiscal administration and political capacity to effectively represent its residents before high units of government, such as the Metropolitan Council.

37. *The 1972 population of the territory herein consolidated with the Village of Prior Lake is estimated to be 1,566. The 1972 population of the New Village of Prior Lake after this consolidation is estimated by the Metropolitan Council to be 2,84*.

38. *The 1972 population of the area described in Finding #5 is estimated to be 124.*

CONCLUSIONS OF LAW

1. The Commission duly acquired and now has jurisdiction over the within consolidation proceeding.

2. The territory described in Finding #5 would better be served by annexation to the City of Shakopee, and the

area proposed for consolidation should be decreased accordingly.

3. Consolidation of the remainder of the territory proposed for consolidation, more particularly described in Finding #4, and the Village of Prior Lake would be in the best interest of the said territory and village and the Commission should issue its order consolidating said area and said village.

4. The area subject to Conclusion #3 is now or is about to become urban or suburban in character.

5. The municipal form of government is better able to cope with the urban development which is occurring and will continue to occur in the area subject to Conclusion #3.

6. The consolidated municipality shall be known as the Village of Prior Lake and shall be governed by Village Plan "A" as set forth in Minnesota Statutes.

ORDER

IT IS HEREBY ORDERED: That the area proposed for consolidation be decreased by removal of the following described property:

> All of Sections 29, 30 and 31, the South one-half of Sections 19 and 20, and the west one-half of Section 32, T115N, R22W.

IT IS FURTHER ORDERED: That the following described property be consolidated with the property of the Village of Prior Lake to form a new Village of Prior Lake.

That part of Eagle Creek Township lying Easterly and Southerly of the following described line: Beginning at the Southwest corner of the east 1/2 of Section 32, T115N, R22W; thence north on the west line of the east 1/2 to the north line of Section 32; thence east to the northeast corner of said Section 32; thence north on the east line of Sections 29 and 20 to the east and west 1/4 line of Section 21; thence east on said 1/4 line to the east line of Section 21; thence Northerly on said east line 1/4 mile to the north line of Indian Reservation, thence in an easterly direction on said reservation 1/2 mile to the north and south 1/4 line; thence south 1/4 mile to the east and west 1/4 line; thence east 1/2 mile to the east line of Section 22; thence north 1/4 mile, more or less, to the south line of north 1/2 of the north 1/2 of Section 23, T115N, R22W; thence east on said south line 1/2 mile to the north and south 1/4 line of Section 23; thence north 1/4 mile to the north line of Section 23; thence east on said north line 1/2 mile to the east line of said Section 23; thence south on said east line 1/2 mile more or less to the south line of the north 1/2 of Section 23; thence continuing easterly on the east and west 1/4 line of Section 24, T115N, R22W to the east line of said Section and there terminating.

IT IS FURTHER ORDERED: That pending determination of the Commission in proceeding A-2130, that the portion of the Town of Eagle Creek deleted from the area proposed for consolidation shall remain as the Town of Eagle Creek.

IT IS FURTHER ORDERED: That the ad valorem taxes due and payable in 1972 on the property situated within the territory described in Finding #4, except those taxes levied for the retirement of any bonded debt of the Town of Eagle Creek as it existed immediately prior to this order, shall be disposed of in the following manner. The county auditor shall determine the ratio of the assessed valuation of the property situated within the territory of the Town of Eagle-Creek described in Finding #4 and the assessed valuation of the property situated within the territory described in Finding #3, and apply this ratio to the above described taxes. The resultant amount shall be forwarded to and be the property of the new Village of Prior Lake. The remainder of said taxes shall be forwarded to and be the property of the Town of Eagle Creek.

IT IS FURTHER ORDERED: That the property situated within the Town of Eagle Creek as it existed immediately prior to this order shall continue to be primarily liable for the retirement of any bonded debt of said town as it existed immediately prior to this order.

IT IS FURTHER ORDERED: That payment of the bonded debt of the Town of Eagle Creek as it existed immediately prior to this order shall be administered by the new Village of Prior Lake. That the county auditor shall forward all taxes collected for the retirement of said debt to said village, and that said village shall be responsible for forwarding such monies to the appropriate parties.

IT IS FURTHER ORDERED: That all other property and obligations of the Town of Eagle Creek shall remain the property and obligations of said town.

IT IS FURTHER ORDERED: That the $48,411.81 remaining in the General Road and Bridge, Fire and Park Funds on June 19, 1972 shall be divided on the basis of the ratio of assessed valuation, which ratio shall be 90% to 10%. That the Town of Eagle Creek shall consequently be responsible for forwarding $43,570.63 of these funds plus any interest accumulated thereon since June 19, 1972 to the Village of Prior Lake.

IT IS FURTHER ORDERED: That any 1972 per capita state government aids or rebates which have been received or are received on or after June 19, 1972, together with any interest accumulated thereon shall be divided on the basis of population ratio as determined in this order which ratio is 124 to 1,566. That if any of said aids were intended by the Department of Taxation to be based on population which has been consolidated with the City of Shakopee in Minnesota Municipal Commission proceeding #C2-mt, such aids and interest shall be divided between the three governments on the basis of the ratio of population as contained in both orders, which ratio is 124 to 1,566 to 904.

IT IS FURTHER ORDERED: That all special road funds, including particularly the Maple Park-Valley Industrial Park Road Fund, shall be transferred to and become the responsibility of the new Village of Prior Lake. The Village shall be responsible for the administration of these funds and the retirement of any bonds involved.

IT IS FURTHER ORDERED: That the settlement and adjustment of the assets and obligations as provided in this amended order shall be accomplished within fifteen days from the date hereof.

IT IS FURTHER ORDERED: That the plan of government for the new Village of Prior Lake shall be Village Plan "A".

IT IS FURTHER ORDERED: That the first election in the enlarged Vilage of Prior Lake shall be held between the hours of 10:00 a.m. and 8:00 p.m. on the 13th day of June, 1972 and that said election shall be conducted in conformity with the laws for conducting a village election so far as possible, and that the following polling place is hereby designated:

The Village Hall in the Village of Prior Lake.

That the acting clerk for said election shall be Al Hergot and that the following persons are appointed election judges for the first election of officers as follows:

Mrs. Nellie Lannon
Mrs. Willmar Mueller
Mrs. Clara Muelken
Mrs. Marlys Bludorn

IT IS FURTHER ORDERED: That the Secretary of the Commission shall establish a procedure for receiving evidence as to the population of the new Village of Prior dence as to the population of the new Village of Prior Lake and that a supplemental order establishing population for all purposes be issued.

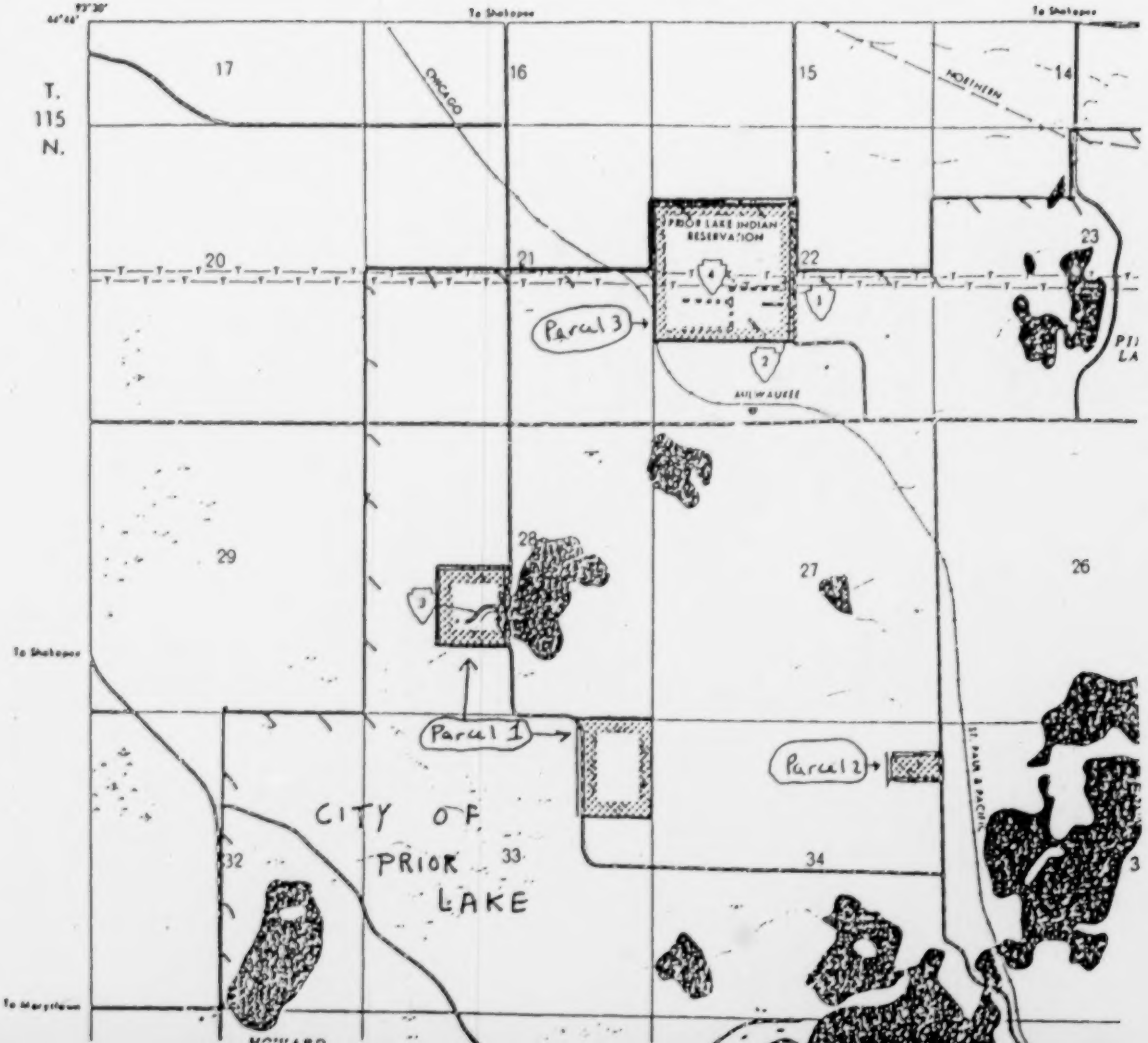
IT IS FURTHER ORDERED: That until the next state-wide or federal census is taken, the population of the Village of Prior Lake shall be 2.840 for all purposes.

IT IS FURTHER ORDERED: That the consolidation herein ordered shall be effective upon the election and qualifications of the new village officers.

IT IS FURTHER ORDERED: That the Secretary of the Commission shall cause the mailing and filing of this Amended Order to the proper parties as required by law.

Amended Order
Dated this 26 day of October, 1972

MINNESOTA MUNICIPAL COMMISSION
304 Capitol Square Building
St. Paul, Minnesota 55101
/s/ Howard L. Kaibel
Howard L. Kaibel, Jr.
Executive Secretary


R. 22 W.
T. 115 N.
To Shakopee
To Shakopee
To Shakopee
To Shakopee
To Marystown
17
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33
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CHICAGO
NORTHERN
PRIOR LAKE INDIAN RESERVATION
MILWAUKEE
Parcel 3
Parcel 1
Parcel 2
CITY OF PRIOR LAKE
ST PAUL & PACIFIC
HOWARD

FIRE AND RESCUE AGREEMENT

THIS AGREEMENT, Made and entered into this 20 day of September, 1982, by and between the City of Prior Lake, a Municipal Corporation in Scott County, Minnesota, and the New England/Pan American Entertainment Company, in Scott County, Minnesota.

WITNESSETH, That:

WHEREAS, The said Corporation deems it advisable to have available for the benefit of its customers of the Little Six Bingo Palace and residents of the Shakopee Mdewakanton Sioux Community the services of the Fire Department of said Ctiy; and

WHEREAS, Said City has the facilities necessary to furnish fire and rescue services to said customers and residents;

NOW THEREFORE, IT IS AGREED by and between the parties as follows:

1. For the period from October 1, 1982 until December 31, 1997 the Fire Department of the City of Prior Lake will answer any and all fire and rescue calls of the Little Six Bingo Palace and the Shakopee Mdewakanton Sioux Community and will respond to such calls with suitable apparatus manned by members of the City of Prior Lake's Fire Department, who will render all assistance possible in saving of life and property. However, either party may terminate this agreement for any reason with a three (3) month written notice.

2. For such service, said Corporation agrees to pay the City $3,125.00 for the period of time from October 1,

1982 to December 31, 1982. Thereafter, said Corporation agrees to pay the City $12,500.00 annually for the term of this contract. This payment shall be paid in January of each year, and shall be adjusted upward in the same percentage as property values for the entirety of Scott County exceed the values for the preceding year.

3. It is understood and agreed, however, that at times weather and road conditions will interfere with the rendering of service, and that at any given time the equipment may be engaged for services in the City or in another township. In any of these events, failure to provide the service herein agreed upon, shall not be taken as a breach of this agreement.

4. It is further agreed, that said City shall not be held liable in any way to the Community, or to any inhabitant or property owner thereof, or to any other person, firm or corporation for failure of said City's Fire Department to attend a fire or rescue call or for failure to arrive in time to put out a fire for any of the reasons listed in paragraph 3 above, or for damage to goods or property or for personal injury rssulting therefrom.

5. For each fire and/or rescue call made by the City, said City is entitled to any and/or all sums payable under the provisions of insurance policies or other coverage of said residents and visitors for fire and/or rescue calls made.

6. It is further agreed and understood that fire and rescue services shall be provided to the residents of the Shakopee Mdewakanton Sioux Community at no additional charge as long as this agreement is in effect.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by the respective officers thereof and the respective seals to be affixed hereto.

NEW ENGLAND/PAN AMERICAN ENTERTAINMENT CO.
/s/ Alle Abogart

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY
/s/ Norman M. Crooks,
Norman M. Crooks, Chairman

CITY OF PRIOR LAKE
/s/ Hattie A. Stock
Mayor

/s/ Michael A. McGuire
City Manager

CITY OF PRIOR LAKE
MICHAEL A. McGUIRE, MANAGER

RESOLUTION 83-18

A RESOLUTION ESTABLISHING THE BOUNDARIES OF THE PRECINCTS FOR ELECTION PURPOSES

MOTION BY: THORKELSON SECONDED BY: BUSSE

WHEREAS, the City Council of the City of Prior Lake makes the following resolution, and

WHEREAS, the purpose of this resolution is to establish the boundaries of the precincts for election pur-

poses in the City of Prior Lake in accordance with Exhibit "A".

NOW THEREFORE BE IT RESOLVED THAT the City Manager shall immediately prepare and file with the Scott County Auditor, Secretary of State and with the Commissioner of Energy Planning and Development, maps showing the precinct boundaries of each election precinct as set forth in Exhibit "A".

BE IT FURTHER RESOLVED THAT a copy of these resolutions, including Exhibit "A", be furnished to the Scott County Commissioners by the City Manager, together with the Council's recommendation that if the Shakopee Mendawakanton Sioux Reservations are not currently included in any Scott County election precinct maps, that said Commissioners immediately establish boundaries of precincts in Scott County for election purposes to include the boundaries of said reservations.

BE IT FURTHER RESOLVED THAT the physical boundaries of the three precincts are established as follows.

PRECINCT No. #1 shall be comprised of all that territory within the City Limits lying East and North of the following described line: County Road 21, commencing at the Bridge separating Upper and Lower Prior Lake along said southern right of way to the East City Limits, thence North along the East City limits to its intersection with Highway 13, thence North along Highway 13 until arriving at a point perpendicular to Boudin's Bay, thence following the southern lakeshore of Prior Lake back to the point of beginning.

PRECINCT No. #2 shall be comprised of all that territory within the City Limits lying West and South of the

following described line: County Road 21, commencing at the extreme Southern City Limits, thence Northwesterly along said right of way to County Road 42, thence west along County Road 42 to its intersection with McKenna Road, thence North along McKenna Road to the North City Limits excluding the Shakopee Mendawakanton Sioux Reservations.

PRECINCT No. #3 shall be comprised of ali the territory within the City Limits lying East and North of the following described line: County Road 21 commencing at the Bridge separating Upper and Lower Prior Lake, thence North along said right of way to County Road 42, thence West along County Road 42 to its intersection with McKenna Road, thence North along McKenna Road to the North City Limits, thence East following the said City Limit Boundary until intersecting with Highway 13, thence South along Highway 13 to a point perpendicular to Boudin's Bay, thence following the Northern shoreline of Prior Lake back to the point of beginning.

Passed and adopted this 18th day of July, 1983.

	YES		NO
STOCK	x	STOCK	___
BUSSE	x	BUSSE	___
SCHWEICH	x	SCHWEICH	___
SCOTT	x	SCOTT	___
THORKELSON	x	THORKELSON	___

/s/ Michael A. McGuire

MICHAEL A. MCGUIRE, CITY MANAGER, CITY OF PRIOR LAKE

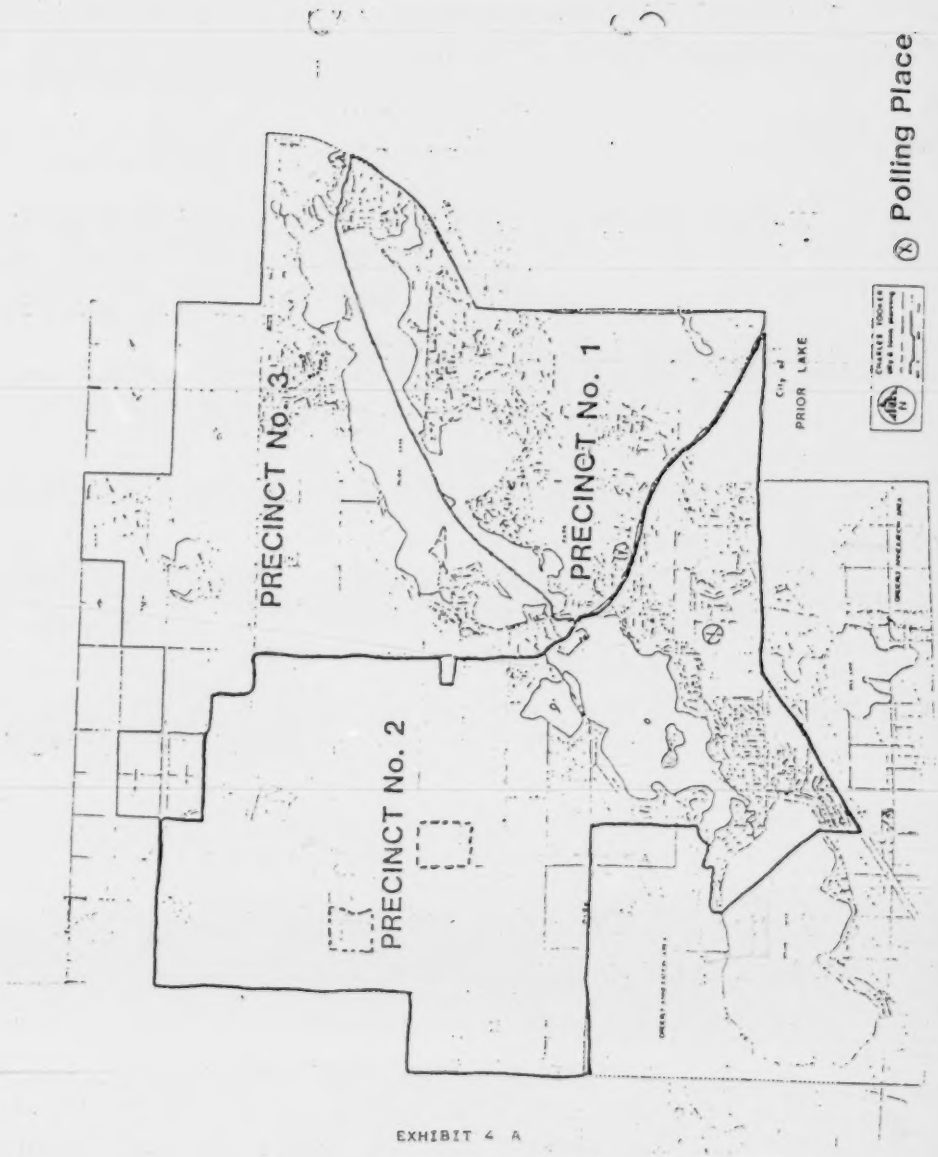
PRECINCT No. 3
PRECINCT No. 1
PRECINCT No. 2
PRIOR LAKE
Polling Place

EXHIBIT 4 A

EXHIBIT 5

CONSTITUTION
OF THE
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY
of
MINNESOTA

PURPOSE

We, the Indian people of the Shakopee Mdewakanton Sioux Community, in order to secure the advantages of local self-government for ourselves and our children, do ordain and establish this constitution.

ARTICLE I—TERRITORY

The territory of the Shakopee Mdewakanton Sioux Community shall consist of the four tracts of land located in Scott County, Minnesota, described in Appendix "A" attached hereto, now held in trust by the United States for the Minnesota Mdewakanton Sioux Indians and shall include such other lands as may be legally added thereto. The jurisdiction of the community over such lands shall not be inconsistent with applicable Federal and State laws.

ARTICLE II—MEMBERSHIP

Section 1. The membership of the Shakopee Mdewakanton Sioux Community shall consist of:

(a) All persons of Mdewakanton Sioux Indian blood, not members of any other Indian tribe, band or group, whose names appear on the 1969 census roll of Mdewakanton Sioux residents of the Prior Lake Reservation, Minnesota, prepared

specifically for the purpose of organizing the Shakopee Mdewakanton Sioux Community and approved by the Secretary of the Interior.

(b) All children of at least one-fourth (1/4) degree Mdewakanton Sioux Indian blood born to an enrolled member of the Shakopee Mdewakanton Sioux Community.

(c) All descendants of at least one-fourth (1/4) degree Mdewakanton Sioux Indian blood who can trace their Mdewakanton Sioux Indian blood to the Mdewakanton Sioux Indians who resided in Minnesota on May 20, 1886, *Provided,* they apply for membership and are found qualified by the governing body, and provided further, they are not enrolled as members of some other tribe or band of Indians.

Sec. 2. The governing body shall have power to pass resolutions or ordinances, subject to the approval of the Secretary of the Interior, governing future membership, adoptions and loss of membership.

ARTICLE III—GOVERNING BODY

The governing body of the Shakopee Mdewakanton Sioux Community shall be a general council, composed of all persons qualified to vote in community elections. There shall be a business council consisting of the chairman, vice-chairman, and a secretary-treasurer, which shall perform such duties as may be authorized by the general council. Members of the business council shall hold office for four (4) years or until their successors are duly in-

stalled, except that the first business council elected under this constitution shall hold office for only two (2) years. They shall also act as officers. The governing body shall determine its own procedures.

ARTICLE IV—ELECTIONS

All elections of officers, including the first election, shall be conducted under rules and regulations prescribed by the general council. Community members eighteen (18) years of age or over shall qualify as voters and, if elected, may hold office.

ARTICLE V—POWERS

The general council shall have such applicable powers as may be authorized by the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), and other Acts of Congress. The general council may delegate such powers to the elected business council. The governing body shall manage community property including the recommending and the making of assignments to community members. Further powers may be delegated by the Secretary of the Interior or by other duly authorized officials or agencies of government and such other powers as may have been customary and sanctioned before the adoption of this constitution. The exercise of all powers shall be subject to approval by the Secretary of the Interior, where required by Federal law or published regulations of the Secretary of the Interior.

ARTICLE VI—BILL OF RIGHTS

All members of the community shall be accorded equal opportunities to participate in the economic resources and

activities of the community. All members of the community may enjoy, without hindrance, freedom of worship, conscience, speech, press, assembly, association and due process of law, as guaranteed by the Constitution of the United States.

ARTICLE VII—AMENDMENTS

This constitution may be amended by a majority vote of the qualified voters of the community voting at an election authorized for that purpose by the Secretary of the Interior, provided at least thirty percent (30%) of those entitled to vote shall vote in such election; but no amendment shall become effective until it shall have been approved by the Secretary of the Interior.

ARTICLE VIII—RATIFICATION

This constitution, when legally adopted by a majority vote of the voters of the Shakopee Mdewakanton Sioux Community, voting at a special election called for that purpose by the Secretary of the Interior in which at least thirty percent (30%) of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval, and shall be effective from the date of such approval.

APPROVAL

I, HARRISON LOESCH, Assistant Secretary of the Interior of the United States of America, by virtue of the authority granted to me by the Act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached

Constitution of the Shakopee Mdewakanton Sioux Community of Minnesota.

Approval Recommended:

Commissioner of Indian Affairs

HARRISON LOESCH
Assistant Secretary of the Interior

Washington, D. C.,
Date: November 28, 1969

AMENDMENT

CONSTITUTION
OF THE
SHAKOPEE MDEWAKANTON SIOUX COMMUNITY
OF MINNESOTA

AMENDMENT 1

Article V—Powers shall be amended in its entirety to read as follows:

ARTICLE V—POWERS

Section 1. Enumerated Powers. The general council shall exercise the following powers and may delegate such powers to the elected business council, subject to any limitations imposed by the Constitution or Statutes of the United States, and subject further to all expressed restrictions upon such powers contained in this constitution.

(a) To negotiate and contract with the Federal, State, and local governments on behalf of the community, and to advise and consult with the representatives of the Interior Department on all activities of the Department that may affect the community.

(b) To employ counsel for the protection and advancement of the rights of the community and its members, which employment and fee is subject to approval by the Secretary of the Interior and in accord with the provisions of Section 16 of the Indian Reorganization Act, 25 U.S.C. 476.

(c) To approve or veto any sale, disposition, lease or encumbrance of community lands, interest in lands, or other community assets.

(d) To advise the Secretary of the Interior relative to the roll of members of the community.

(e) To manage all economic affairs and enterprises of the community, except where limited by contract, federal regulations, or through the establishment of an autonomous board, committee or agency.

(f) To appropriate for public purposes of the community available funds within the exclusive control of the community and, subject to review by the Secretary of the Interior, any other available community funds.

(g) To promulgate and enforce ordinances, subject to review by the Secretary of the Interior, which provide for taxes, assessments, or license fees upon non-members doing business within the reservation, or obtaining special rights or privileges.

(h) To promulgate and enforce ordinances which are intended to safeguard and promote the peace, safety, morals, and general welfare of the community by regulating the conduct of trade and the

use and disposition of property upon the reservation, providing that any ordinance directly affecting non-members shall be subject to review by the Secretary of the Interior.

(i) To adopt resolutions regulating the operation and procedures of the council itself and of other community committees, agencies and officials.

(j) To encourage and foster the arts, crafts, traditions, and culture of the Mdewakanton Sioux Indians.

(k) To create subordinate organizations for community development purposes and to regulate the activities of all such organizations.

(l) To protect, develop and preserve the property, wildlife and natural resources of the community.

(m) To delegate to subordinate boards, or community officials, or to cooperative associations which are open to all members of the community, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated powers.

(n) To establish autonomous boards andagencies, and to enter with other Indian communities, reservations, Tribes or boards in the establishment of autonomous boards and agencies for the benefit of the community to further develop the housing, economy, social welfare, transportation, communications, education, health, and culture of the community. All such boards and agencies shall be established upon ratification of the community.

(o) To join and participate in national, regional, state

and local associations which have the purpose of the advancement of the welfare of Indian people and to appoint members of the community as representatives to such associations.

(p) To join and participate in intergovernmental or intertribal organizations which have purposes compatible to the community and to pay participation fees and make contributions to such organizations and elect, or appoint, members of the community as representatives to such organizations.

Sec. 2. Any resolution or ordinance which, by terms of this constitution, is subject to review by the Secretary of the Interior shall be presented to the Area Director of this jurisdiction, who shall, within ten (10) days thereafter, approve or disapprove the same. If the Area Director shall approve any ordinance or resolution, it shall thereupon become effective, but the Area Director shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior who may, within ninety (90) days from the date of its enactment, rescind the action of the Area Director for any cause by notifying the council of such decision.

If the Area Director shall refuse to approve any resolution or ordinance submitted to him within ten (10) days of its enactment, he shall advise the council of his reasons therefore. If these reasons appear to the council insufficient, it may, by a majority vote, refer the ordinance of resolution to the Secretary of the Interior, who may, within ninety (90) days from the date of its enactment, approve the same in writing, whereupon the said ordinance or resolution shall become effective.

If the Area Director takes no action to approve or dis-

approve any resolution or ordinance within thirty (30) days of its being presented to the Area Director, the community shall consider the resolution or ordinance approved and notify the Area Director of the same.

Sec. 3. Future Powers. The council may exercise such further powers as may in the future be delegated to the community by the Secretary of the Interior, or by any duly authorized official or agency of government or by any member of the community.

Sec. 4. Reserved Powers. Any rights and powers heretofore vested in the members of the Shakopee Mdewakanton Sioux Community of Minnesota in respect to any interests or affairs of the community, but not expressly referred to in this constitution, shall not be abridged by this article, but may be exercised by the people of the community through the adoption of appropriate by-laws and constitutional amendments.

APPROVAL

I, Casimir L. LeBeau, Acting Area Director, Minneapolis Area Office, BIA, Minneapolis, Minnesota, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat 984) as amended, and delegated to the Commissioner of Indian Affairs by 230 DM 1.1 and redelegated to me by 10 BIAM 3.1, do hereby approve the foregoing Amendment No. 1 to the constitution of the Shakopee Mdewakanton Sioux Community of Minnesota.

/s/ Casimir L. LeBeau
Acting Area Director

May 22, 1980
Minneapolis, Minnesota

§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

(a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal laws of such State or Territory shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	*Indian country affected*
Alaska	All Indian country within the State, except that on Annette Islands, the Metlakatla Indian community may exercise jurisdiction over offenses committed by Indians in the same manner in which such jurisdiction may be exercised by Indian tribes in Indian country over which State jurisdiction has not been extended.
California	All Indian country within the State.
Minnesota	All Indian country within the State, except the Red Lake Reservation.
Nebraska	All Indian country within the State.
Oregon	All Indian country within the State, except the Warm Springs Reservation.
Wisconsin	All Indian country within the State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section as areas over which the several States have exclusive jurisdiction.
(Added Aug. 15, 1953, c. 505 § 2, 67 Stat. 588, and amended Aug. 24, 1954, c. 910, § 1 68 Stat. 795; Aug. 8, 1958, Pub. L. 85-615, § 1, 72 Stat. 545; Nov. 25, 1970, Pub. L. 91-523, §§ 1, 2, 84 Stat. 1358.)

SUBCHAPTER III—JURISCITION OVER CRIMINAL AND CIVIL ACTIONS

§ 1321. Assumption by State of criminal jurisdiction

(a) Consent of United States; force and effect of criminal laws

The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian coun-

try situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Alienation, encumbrance, taxation, and use of property; hunting, trapping, or fishing

Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

(Pub. L. 90-284, Title IV, § 401, Apr. 11, 1968, 82 Stat. 78.)

* * *

§ 1322. Assumption by State of civil jurisdiction

(a) Consent of United States; force and effect of civil laws

The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Alienation, encumbrance, taxation, use, and probate of property

Nothing in this section shall authorize, the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Force and effect of tribal ordinances or customs

Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

Pub. L, 90-284, Title IV, § 404, Apr. 11, 1968, 82 Stat. 79.)

* * *

§ 1323. Retrocession of jurisdiction by State

(a) the United States is authorized to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired by such State pursuant to the provisions of section 1162 of Title 18, section 1360 of Title 28, or section 7 of the Act of August 15, 1953 (67 Stat. 588). As it was in effect prior to its repeal by subsection (b) of this section.

(b) Section 7 of the Act of August 15, 1953 (67 Stat. 588), is hereby repealed, but such repeal shall not affect any cession of jurisdiction made pursuant to such section prior to its repeal.

(Pub. L. 90-284, Title IV, § 403, Apr. 11, 1968, 82 Stat. 79.)

* * *

§ 1324. Amendment of State constitutions or statutes to remove legal impediment; effective date

Notwithstanding the provisions of any enabling Act for the admission of a State, the consent of the United

States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil or criminal jurisdiction in accordance with the provisions of this subchapter. The provisions of this subchapter shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes, as the case may be.

(Pub. L. 90-284, Title IV, § 404, Apr. 11, 1968, 82 Stat. 79.)

* * *

§ 1325. Abatement of actions

(a) No action or proceeding pending before any court or agency of the United States immediately prior to any cession of jurisdiction by the United States pursuant to this subchapter shall abate by reason of that cession. For the purposes of any such action or proceeding, such cession shall take effect on the day following the date of final determination of such action or proceeding.

(b) No cession made by the United States under this subchapter shall deprive any court of the United States of jurisdiction to hear, determine, render judgment, or impose sentence in any criminal action instituted against any person for any offense committed before the effective date of such cession, if the offense chargd in such action was cognizable under any law of the United States at the time of the commission of such offense. For the purposes of any such criminal action, such cession shall take effect

on the day following the date of final determination of such action.

(Pub. L. 90-284, Title IV, § 405, Apr. 11, 1968, 82 Stat. 80.)

* * *

§ 1326. Special election

State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian Country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults.

(Pub. L. 90-284, Title IV, § 406, Apr. 11, 1968, 82 Stat. 80.)

* * *

§ 1360. State civil jurisdiction in actions to which Indians are parties

(a) Each of the States or Territories listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory that are of general application to private persons or private

property shall have the same force and effect within such Indian country as they have elsewhere within the State or Territory:

State or Territory of	*Indian country affected*
Alaska	All Indian country within the Territory
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the

State, be given full force and effect in the determination of civil causes of action pursuant to this section.

Added Aug. 15, 1953, c. 505, § 4, 67 Stat. 589, and amended Aug. 24, 1954, c. 910, § 2, 68 Stat. 795; Aug. 8, 1958, Pub. L. 85-615, § 2, 72 Stat. 545.

* * *

414.031 Annexation of unincorporated property to a municipality by board order

Subdivision 1. Initiating the proceedings. A proceeding for the annexation of unincorporated property abutting a municipality may be initiated by submitting to the executive director and the affected township one of the following:

(a) A resolution of the annexing municipality;

(b) A resolution of the township containing the area proposed for annexation;

(c) A petition of 20 percent of the property owners or 100 property owners, whichever is less, in the area to be annexed;

(d) A resolution of the municipal council together with a resolution of the township board stating their desire to have the entire township annexed to the municipality.

The petition, or resolution shall set forth the boundaries of the territory proposed for annexation, the names of all parties entitled to notice under section 414.09, and the reasons for requesting annexation. If the proceeding is initiated by a petition of property owners, the petition shall be accompanied by a resolution of the annexing municipality supporting the petition.

Subd. 2. Repealed by Laws 1973, c. 621, § 9.

Subd. 3. Board's hearing and notice. Upon receipt of a petition or resolution initiating an annexation the executive director shall designate a time and a place for a hearing in accordance with section 414.09.

Subd. 4. Board's order. In arriving at its decision, the board shall consider the following factors:

(a) Present population, past population growth and projected population of the property proposed for annexation and the annexing municipality;

(b) Quantity of land within the property proposed for annexation and the annexing municipality; and natural terrain including general topography, major watersheds, soil conditions and such natural features as rivers, lakes and major bluffs;

(c) Degree of contiguity of the boundaries between the annexing municipality and the property proposed for annexation;

(d) Present pattern of physical development of the property proposed for annexation and the annexing municipality including residential, industrial, commercial, agricultural and institutional land uses; the present transportation network and potential transportation issues, including proposed highway development;

(e) Land use controls and planning presently being utilized in the annexing municipality and the property proposed for annexation, including comprehensive plans for development in the area and plans and policies of the metropolitan council. If there is an inconsistency be-

tween the proposed development and the land use planning ordinance in force, the reason for the inconsistency;

(f) Present governmental services being provided in the annexing municipality and the property proposed for annexation, including water and sewer service, fire rating and protection, police protection, street improvements and maintenance, admininstrative services, and recreational facilities;

(g) Existing or potential problems of environmental pollution and the need for additional services to resolve these problems;

(h) Plans and programs by the annexing municipality for providing needed governmental services to the property proposed for annexation;

(i) Fiscal data of the annexing municipality and the property proposed for annexation, including assessed valuation and the present bonded indebtedness, and the mill rates of the county, school district, and township.

(j) Relationship and effect of the proposed annexation on communities adjacent to the area and on school districts within and adjacent to the area.;

(k) Adequacy of town government to deliver services to the property proposed for annexation;

(l) Analysis of whether necessary governmental services can best be provided through incorporation or annexation to an adjacent municipality; and

(m) If only a part of a township is annexed, the ability of the remainder of the township to continue or the feasibility of it being incorporated separately or being annexed to another municipality.

Based upon these factors, the board may order the annexation (a) if it finds that the property proposed for annexation is now, or is about to become, urban or suburban in character, or (b) if it finds that municipal government in the area proposed for annexation is required to protect the public health, safety, and welfare, or (c) if it finds that the annexation would be in the best interest of the property proposed for annexation. If only a part of a township is to be annexed, the board shall consider whether the remainder of the township can continue to carry on the functions of government without undue hardship. The board shall deny the annexation if it finds that the increase in revenues for the annexing municipality bears no reasonable relation to the monetary value of benefits conferred upon the annexed area. The board may deny the annexation (a) if it appears that annexation of all or a part of the property to an adjacent municipality would better serve the interests of the residents of the property or (b) if the remainder of the township would suffer undue hardship.

The board may alter the boundaries of the area to be annexed by increasing or decreasing the area so as to include only that property which is now or is about to become urban or suburban in character or to add property of such character abutting the area proposed for annexation in order to preserve or improve the symmetry of the area, or to exclude property that may better be served by another unit of government. If the board determines that part of the area would be better served by another municipality or township, the board may initiate and approve annexation on its own motion by conducting further hearings and issuing orders pursuant to subdivisions 3, 4, and 5. In all cases, the board shall set forth the factors which are the basis for the decision.

Subd. 4a. Proceedings initiated by joint reolution. If the proceeding has been initiated under subdivision 1, clause (d), any annexation order shall include a provision for the election of new municipal officers in accordance with section 414.09. The expanded municipality shall be governed by the home rule charter or statutory form which governs the annexing municipality, except that any ward system fo rthe election of councilmen shall be inoperable. The ordinances of both the annexing municipality and the township shall continue in effect within the former boundaries until repealed by the governing body of the new municipality.

Notwithstanding any other provision of law to the contrary the board may provide for election of councilmen by wards, not less than three nor more than seven in number, whose limits are prescribed in the board order, upon a finding that area representation is required to accord proper representation in the municipality because of uneven population density in different parts thereof or the existence of agricultural lands therein which are in the path of suburban development; but after four years from the effective date of an annexation the council of the municipality may by resolution adopted by a four-fifths vote abolish the ward system and provide for the election of all councilmen at large.

Until the effective date of the annexation order, the town board and other officers of the town shall continue to exercise their powers and duties under the town laws in that portion of the municipality that was formerly the town, and the council and other officers of the annexing municipality shall continue to exercise their powers and duties in that portion of the expanded municipality that was

formerly the municipality. Thereafter the town board and the council of the annexing municipality shall have no jurisdiction within the municipality, and the new municipal council and other new officers shall act in respect to any matters previously undertaken by the town board of supervisors or municipal council within the limits of the expanded municipality, including the making of any improvement and the levying of any special assessments therefor in the same manner and to the same effect as if such improvement had been undertaken by the municipality.

The new municipal council may continue or discontinue any board that may have previously existed in the town or former municipality.

Subd. 5. Annexation election. Where the proceeding for annexation has been initiated by petition of a majority of the property owners within the area to be annexed or when the board has assumed jurisdiction under section 414.081, subdivision 1, clause (d) and orders that the entire township named in the resolution be annexed to the city named in the resolution, no referendum is required. In all other instances the order of the board shall fix a day, not less than twenty days nor more than ninety days, after the entry of such an order, when an election shall be held at a place designated by the board within the area determined by the board to be primarily and substantially interested in or affected by the board order. The executive director shall cause a copy of the order affirming the petition, including the notice of the election, to be posted not less than 20 days before the election in three public places in the area, and shall cause notice of the election to be published two successive weeks in a newspaper qual-

ified as medium of official and legal publication, of general circulation, in the area. The board shall appoint the necessary election judges from voters resident in the area and shall supervise them in their duties. The board shall designate the polling place or places, using so far as possible the usual polling place or places. The polls shall be open at least 13 hours and until at least 8 p.m. The judges shall conduct the election so far as practicable in accordance with the laws regulating special elections. Only voters residing within the area primarily and substantially interested in or affected by the board's order shall be entitled to vote. The ballot shall bear the words "For Annexation" and "Against Annexation" with a square before each of the phrases in one of which the voter shall make a cross to express his choice. The ballots and election supplies shall be provided and the election judges shall be paid by the petitioners or annexing municipality. Immediately upon completion of the counting of the ballots, the judges of the election shall make a signed and verified certificate declaring the time and place of holding the election, that they have canvassed the ballots cast, and the number cast both for and against the proposition, and they shall then file the certificate with the executive director of the board. If the certificate shows the majority of the votes cast were "For Annexation" the board's order shall be effective in accordance with subdivision 6. If a majority of votes were cast against the annexation, the board shall not issue an order for annexation. If the annexation is denied, or if it is defeated in the referendum, no proceeding for the annexation of substantially the same area may be initiated within two years from the date of the board's order, unless the new proceeding is initiated by a majority of the area's

property owners and the petition is supported by any abutting townships and municipalities. The executive director shall upon receipt of the certificate notify all parties of record of the election results.

Subd. 6. Effective date of annexation. The annexation shall be effective as of the date fixed in the annexation order or on such later date as is fixed in the annexation order.

Added by Laws 1969, c. 1146, § 10, eff. June 10, 1969. Amended by Laws 1973, c. 123, art. 5, § 7; Laws 1973, c. 621, § 11; Laws 1975, c. 271, § 6; Laws 1978, c. 705, § 13, eff. March 29, 1978.

* * *

42 § 1971 PUBLIC HEALTH & WELFARE

SUBCHAPTER I-E—VOTING RIGHTS OF OVERSEAS CITIZENS

Sec.

1973dd-3. Enforcement by Attorney General.
(a) Jurisdiction of courts.
(b) Depriving or attempting to deprive persons of secured rights; penalties.
(c) Giving or conspiring to give false information; payment or acceptance of money-penalties.

19733dd-4. Separability of provisions.

19733dd-5. Applicability to State registration requirements and voting practices; determination of residence or domicile for tax purposes.

1973dd-6. Authorization of appropriations.

SUBCHAPTER II—FEDERAL ELECTION RECORDS

1974. Retention and preservation of records and papers by officers of elections; deposit with custodian; penalty for violation.

1974a. Theft, destruction, concealment, mutilation, or alteration of records or papers; penalties.

1974b. Demand for records or papers by Attorney General or representative; statement of basis and purpose.

1974c. Disclosure of records or papers.

1974d. Jurisdiction to compel production of records or papers.

1974e. Definitions.

SUBCHAPTER I—GENERALLY

§ 1971. Voting rights

Race, color, or previous condition not to affect right to vote; uniform standards for voting qualifications; errors or omissions from papers; literacy tests; agreements between Attorney General and State or local authorities; definitions

(a) (1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, cus-

tom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

(2) No person acting under color of law shall—

(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

(B) deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election; or

(C) employ any literacy test as a qualification for voting in any election unless (i) such test is administered to each individual and is conducted wholly in writing, and (ii) a certified copy of the test and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to Title III of the Civil Rights Act of 1960) *Provided, however,* That the Attorney General may enter into agreements with appropriate State or local authorities that preparation, conduct, and maintenance of such tests in accordance with the provisions of applicable State or local law, including such special provisions as are necessary in

the preparation, conduct, and maintenance of such tests for persons who are blind or otherwise physically handicapped, meet the purposes of this subparagraph and constitute compliance therewith.

* * *

§ 1973a. Proceeding to enforce right to vote

Authorization by court for appointment of federal examiners

(a) Whenever the Attorney General or an aggrieved person institutes a proceeding under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any State or political subdivision the court shall authorize the appointment of Federal examiners by the Director of the Office of Personnel Management in accordance with section 1973d of this title to serve for such period of time and for such po tical subdivisions as the court shall determine is appropriate to enforce the voting guarantees of the fourteenth or fifteenth amendment (1) as part of any interlocutory order if the court determines that the appointment of such examiners is necessary to enforce such voting guarantees or (2) as part of any final judgment if the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred in such State or subdivision: *Provided,* That the court need not authorize the appointment of examiners if any incidents of denial or abridgement of the right to vote on account of race or color, or in contravention of the voting guarantees set forth in section 1973b (f) (2) of this title (1) have been few in number and have been promptly and effectively corrected by State or local action, (2) the continuing effect of such

incidents has been eliminated, and (3) there is no reasonable probability of their recurrence in the future.

* * *

CONSTITUTION

AMENDMENT XIV.—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the pro-

portion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be

subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

R.S. § 1979; Pub. L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.

* * *

§ 465. Acquisition of lands, water rights or surface rights; appropriation; title to lands; tax exemption

The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

For the acquisition of such lands, interests in lands, water rights, and surface rights, and for expenses incident to such acquisition, there is authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a sum not to exceed $2,000,000 in any one fiscal year: *Provided*, That no part of such funds shall be used to acquire additional land outside of the exterior boundaries of Navajo Indian Reservation for the Navajo Indians in Arizona, nor in New Mexico, in the event that legislation to define the exterior boundaries of the Navajo Indian Reser-

vation in New Mexico, and for other purposes, or similar legislation, becomes law.

The unexpended balances of any appropriations made pursuant to this section shall remain available until expended.

Title to any lands or rights acquired pursuant to sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, and such lands or rights shall be exempt from State and local taxation.

(June 18, 1934, c. 576, § 5, 48 Stat. 985.)

* * *

Supreme Court, U.S.
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No. 85-758

In the

Supreme Court of the United States

October Term, 1985

CITY OF PRIOR LAKE, MINNESOTA,
Appellant/Petitioner,

vs.

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY AND EDITH CROOKS,
Respondents,

and

UNITED STATES OF AMERICA,
Intervenor.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF IN OPPOSITION TO CERTIORARI OF SHAKOPEE MDEWAKANTON SIOUX COMMUNITY AND EDITH CROOKS

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QUESTION PRESENTED FOR REVIEW

Whether a Minnesota Indian reservation that formed part of an unincorporated township was annexed by a Minnesota municipality corporation when the municipality's boundaries were extended to surround the reservation.

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STATEMENT OF THE CASE

The facts in this matter were the subject of a Stipulation before the United States District Court for the District of Minnesota. The Stipulation with its Exhibits appears at pages 36 through 74 of the Appendix to the Petition for Writ of Certiorari of the City of Prior Lake, Minnesota.

In 1972, the Minnesota Municipal Commission ("the Commission"), acting under the provisions of Minnesota Statutes, Sec. 414.031, altered the boundaries of Prior Lake, Minnesota. (Appendix to Petition for Writ of Certiorari of the City of Prior Lake, [hereafter, "A."], 40). In 1972, Prior Lake was a Village; it now is a City. Id. As a result of the Commission's action, the territory of the Village of Prior Lake was expanded to include approximately one-half of the territory that formerly lay within the unincorporated Township of Eagle Creek. Id. In the same proceedings before the Commission, another Minnesota municipality annexed the remainder of the territory that had lain within Eagle Creek Township, and as a consequence the Township ceased to exist. Id.

The Shakopee Mdewakanton Sioux Indian Reservation ("the Reservation") lay within the boundaries of Eagle Creek Township. In the instant litigation, the United States District Court for the District of Minnesota held, and the United States Court of Appeals affirmed, that the Reservation formed part of the Township. The City of Prior Lake ("the City") has not asked this Court to review that holding. As a result of the 1972 action of the Commission, the Reservation now lies within the exterior boundaries of the City.

The Reservation consists of three noncontiguous parcels of land, with a total area of approximately three hundred acres. The lands lie within territory that was ceded to the United States under a series of treaties in the mid-nineteenth century. A. 37. The three parcels were

purchased in 1890 and 1891 by the United States of America for the Mdewakanton Sioux in Minnesota. A. 38 - 39. The lands are held in trust for the Shakopee Mdewakanton Sioux Community ("the Community"), a Federally recognized Indian tribe. The Community exercises the authority of an Indian tribal government over the Reservation, under the provisions of a Tribal Constitution adopted and approved pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. Sec. 476 (1982). A. 41.

During the annexation proceedings in 1972, the Commission was aware that the territory with which it was dealing contained an Indian reservation. The Commission's Findings of Fact explicitly referred to the Reservation (A. 46), and the Commission's Order, in describing the new northern and western boundary of the City, contained the following provision:

> IT IS FURTHER ORDERED: That the following described property be consolidated with the property of the Village of Prior Lake to form a new Village of Prior Lake:
>
> That part of Eagle Creek Township lying Easterly and Southerly of the following described line: Beginning at the Southwest corner of the east 1/2 of Section 32, T115N, R22W; thence ...[through a series of metes and bounds calls]...; thence Northerly on said east line 1/4 mile to the north line of Indian reservation, thence in an easterly direction on said reservation 1/2 mile to the north and south 1/4 line;...
>
> A. 53 - 54

The Commission's Findings of Fact, Conclusions of Law, and Order reviewed each of the thirteen criteria set out in Minnesota Statutes, Sec. 414.031. On the basis of that review the Commission determined that the annexation was consistent with state law. No challenge has ever been raised before the Commission with respect to its authority to enter its 1972 Order.

During the period following the annexation, the City had only one election precinct, encompassing all of the City's lands. This situation obtained until July 18, 1983, when the City redrew its election precinct boundaries in response to the pressures of increasing population in the City. A 40-41. When it redrew the precinct boundaries, the Prior Lake City Council created three precincts, each of which explicitly excluded the lands of the Reservation. Id. Hence, if the new precinct arrangement were to have become effective, no resident of the Reservation could have voted in the City's elections.

On August 17, 1983, the Community and Edith Crooks, a member of the Community, filed this action in the United States District Court for the District of Minnesota, seeking injunctive and declaratory relief against the City's attempt to exclude residents of the Reservation from the City's elections, and from the City's treatment of Reservation residents in any manner differently than other City residents with respect to city services. Subsequently, the United States of America intervened on behalf of the Community, seeking substantially the same relief. The City answered, denying that the Reservation was included in the City, and it filed a counterclaim for a declaratory judgment to the effect that if the Reservation did in fact lie within the City, then all of the City's regulations and municipal codes applied with full force to the Reservation's lands and residents.

In the subsequent proceedings before the District Court, the City conceded that if the lands of the Reservation actually comprise part of the City, then the City has the obligation to permit Reservation residents to vote and receive services in a nondiscriminatory fashion. A. 21. The City did not submit any evidence or argument with respect to its counterclaim.

On September 23, 1983, the District Court preliminarily enjoined the City from excluding residents of the Reservation from the City's elections. On August 31, 1984, it declared that residents of the Reservation were entitled to vote in City elections and to receive all of the services afforded by the City to its other residents; at the same time, it dismissed the City's counterclaim. A 19 - 35. The City appealed the District Court's award of declaratory and injunctive relief, but not the dismissal of the counterclaim. On August 30, 1985, the United States Court of Appeals affirmed the decision of the United States District Court on all these points. A 1 - 16. The Petition for Certiorari which is the subject of this Brief in Opposition followed.

SUMMARY OF ARGUMENT

The decision of the United States Court of Appeals for the Eighth Circuit is in accord with the holdings of this Court and other federal courts with respect to the annexation of Federal lands. It does not conflict with any decision of any state or federal court, and it presents no question which has not been, but should be, settled by this Court. Indeed, had the Court of Appeals reached any decision other than the one it did reach, the logic of the result ultimately would leave large numbers of reservation Indians in Minnesota in a legal limbo, with no place to vote and no right to receive services from any subdivision of the State.

ARGUMENT

The City suggests that two questions are appropriate for review on Certiorari. First, it asks this Court to determine whether federal law and the law of Minnesota permitted the City to include the Reservation within the City's boundaries in 1972. Second, it suggests that this Court could and should decide the extent to which the City's civil and criminal jurisdiction extends to the lands and residents of the Reservation. The Respondents contend that neither law nor logic makes the first question appropriate for review by this Court; and the second question was never properly placed before either the District Court or the Court of Appeals.

As to the first question, the City's argument begins with the observation that, under this Court's holding in *Bryan v. Itasca County*, 426 U.S. 373 (1976), the ability of the City to regulate residents of the Reservation is different than is its ability to regulate other residents; and the City notes that its power to tax persons or property on the Reservation also is different than is its power elsewhere within its boundaries. From these observations, the City argues that in 1972 the City's boundaries could not have been changed to include the Reservation. The City forwards no authority for its argument, but simply asserts that since it lacks the same taxing and regulatory authority over the Reservation that it possesses with respect to other lands—

> Prior Lake and the State of Minnesota have the same Power to annex Indian lands that they do to annex the State of Iowa—none.
>
> Petition for Writ of Certiorari of the City of Prior Lake, at 10.

The Court of Appeals correctly noted that the force of such an argument—to the effect that Indian reservations somehow are "states within states"— was eliminated by this Court's decision in *Howard v. Commissioners of the Sinking Fund,* 344 U.S. 624 (1953). Under the doctrine of that case, Federal enclaves can be annexed by municipalities, so long as state law permits the annexation and the plenary jurisdiction of the Federal government over lands on a Federal enclave is not disturbed. No distinction between Indian reservation lands held in trust for Indian tribes and other Federally owned areas is suggested by the City, and the Respondents submit that none exists.

The Court of Appeals also was correct that neither of the *Howard* standards were offended by the 1972 action of the Commission. The Commission had, and pretended to have, no authority to change the jurisdictional matrix that pertains to the Reservation. The Commission simply followed the provisions of Minnesota law to the letter. In full knowledge that the lands which were before it included an Indian reservation, it reviewed the thirteen standards enumerated in Minnesota Statutes, Sec. 414.031, and concluded that annexation was appropriate. It entered its Findings of Fact, Conclusions of Law, and Order on the basis of that conclusion, making no exception or exclusion with respect to the Reservation; no challenge was brought before the commission respecting its decision.

The City submits, however, that a fourteenth criterion, implicit in Minnesota law—to the effect that an annexed area must "be so conditioned as properly to be subjected to city government"—could not be met by the annexation of the Reservation's lands. This criterion derives from *State of Minnesota v. City of White Bear Lake,* 255 Minn. 28, 95 N.W.2d 294 (1959); and, interpreted as the City wishes it to be, it would mean that, in Minnesota, all Indian reservation lands would be left behind in all cases where the boundaries of political subdivisions of the State were changed and an Indian reservation is involved.

In other words, were the first question which the City wishes to submit to the Court to be answered as the City wishes, the result would be the creation first of a remnant of a former Township that would lie outside of all local governmental boundaries in Minnesota; and over time, the result might be a crazy quilt of Indian lands which formerly were part of municipalities but no longer continue to be. Plainly, the achievement of such results is not an appropriate use of the Writ of Certiorari.

As to the second question which the City would place before the Court, the Respondents strongly submit that no such question was decided either by the District Court or the Court of Appeals. The City's counterclaim for a declaratory judgment with respect to the reach of its ordinances on the Reservation was dismissed by the District Court, and the dismissal was not appealed. There thus is no question in this case concerning the effect of the City's ordinances that is appropriate for this Court's review.

For all of the above reasons, the Respondents respectfully request that the City's Petition for Writ of Certiorari be denied.

Respectfully submitted,

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No. 85-758

In the Supreme Court of the United States

OCTOBER TERM, 1985

CITY OF PRIOR LAKE, MINNESOTA, PETITIONER

v.

SHAKOPEE MDEWAKANTON SIOUX COMMUNITY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the annexation by the City of Prior Lake of lands within the Shakopee Mdewakanton Sioux Community was invalid under either federal law or Minnesota law.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A16) is reported at 771 F.2d 1153. The memorandum order of the district court (Pet. App. A18-A35) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on August 30, 1985, and the petition for a writ of certiorari was filed on November 1, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. This action was filed in the United States District Court for the District of Minnesota on August 17, 1983, by the Shakopee Mdewakanton Sioux Community and one of its members. They challenged: (i) the establishment by the City of Prior Lake, Minnesota of election precincts that

excluded the Shakopee Mdewakanton Sioux Indian Reservation, and (ii) the City's refusal to provide municipal services to reservation residents on the same basis as they were furnished to other residents of the City. Plaintiffs alleged that these actions violated 42 U.S.C. 1971(a)(1), 1971(a)(2)(A) and Section 2(a) of the Voting Rights Act of 1965, 42 U.S.C. 1973(a); the Fourteenth Amendment to the United States Constitution; 42 U.S.C. 1983; and the Indian Reorganization Act of 1934, 25 U.S.C. 465 (Pet. App. A19). The United States subsequently was permitted to intervene as a plaintiff. The City filed a counterclaim for a declaratory judgment that, if residents of the Reservation are citizens of Prior Lake, they are subject to all laws, ordinances and regulations of the City and all state and federal laws (*id.* at A20).[1]

b. The case was submitted to the district court on stipulated facts, which were adopted and incorporated into the court's memorandum order (Pet. App. A21). The stipulation and exhibits thereto (*id.* at A36-A74) established the following facts:

In 1972, the City of Prior Lake annexed the southern portion of Eagle Creek Township pursuant to the Minnesota annexation statute, Minn. Stat. Ann. § 414.031 (West Supp. 1985) (Pet. App. A39-A40).[2] The 1972 decision of the

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[1]On September 23, 1983, the district court entered a preliminary injunction barring the City from implementing a city council resolution excluding the Reservation from the City's election precincts and from preventing otherwise eligible Indian residents of the Reservation from participating in municipal elections (Pet. App. A20). The court declined to enter preliminary injunctive relief requiring the City to provide municipal services to the Reservation on the same basis as it furnished such services elsewhere, since there was no evidence that the City intended to cease furnishing fire and rescue services pursuant to an existing contract (*ibid.*; *id.* at A60-A62); see pages 3-4, *infra*.

[2]The northern portion of Eagle Creek Township was annexed to the City of Shakopee, and the Township thereafter ceased to exist as a governmental unit (Pet. App. A39-A40).

Minnesota Municipal Commission on the City's annexation petition describes by metes and bounds the portions of Eagle Creek Township that were annexed to Prior Lake (*id.* at A40), and it specifically refers to the "north line of [the] Indian reservation" as forming part of the northern boundary of the expanded Village (now City) of Prior Lake (*id.* at A46). A map that, according to the City's stipulation, "correctly illustrates the current boundaries of the City and the Shakopee Mdewakanton Sioux Reservation" also shows the northern boundary of the City as including the Reservation (*id.* at A40, A59).

The lands comprising the Reservation were purchased by the United States in 1890 and 1891, and title has been held in trust by the United States for the Community since that time (Pet. App. A38-A39). In 1924, by virtue of 8 U.S.C. 1401, the members of the Community became citizens of the United States (Pet. App. A39). Eligible voters living on the Reservation apparently voted in Prior Lake municipal elections between 1972 and 1983 (*id.* at A3).[3] On July 18, 1983, the city council passed Resolution No. 83-18, redrawing the City's election precincts; "Precinct No. 2 was drawn explicitly excluding the land of the Shakopee Mdewakanton Sioux Community Reservation, which would otherwise lie within the exterior boundaries of this voting precinct" (Pet. App. A40-A41). Except as provided by the district court's orders, residents of the Reservation are denied municipal citizenship by the City (*id.* at A41). As a result, those residents receive no municipal services other than those provided pursuant to a contract between the City and the private firm that manages the tribal bingo operation on the

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[3]The City did not so stipulate. However, the district court stated in its September 23, 1984 order granting preliminary injunctive relief (at 5), that it was not disputed that the Reservation was included in the election precinct boundaries prior to July 18, 1983 and that reservation residents in fact voted in past municipal elections.

Reservation (*id.* at A40). Under the terms of that contract, the City receives $12,500 per year for fire and rescue services (*id.* at A60-A62).

2. The district court found that the reservation lands were within the boundaries of Eagle Creek Township at the time of the 1972 annexation and that, by virtue of the annexation, those lands became a part of the City of Prior Lake and reservation residents became citizens of the City (Pet. App. A23).[4] The court rejected the City's argument that the reservation lands were sovereign enclaves within Eagle Creek Township that were not part of the annexation, reasoning that "[t]his fiction of a state within a state has been expressly rejected" by this Court's decisions in *Howard* v. *Commissioners,* 344 U.S. 624, 626-627 (1953), and *Evans* v. *Cornman,* 398 U.S. 419 (1970) (Pet. App. A23-A24).

The district court also rejected the City's argument that the annexation was invalid under state law because the reservation lands were not capable of being subjected to city government. The district court concluded that there is no requirement under Minnesota law that the Reservation be subject to local or state regulatory authority in order to be eligible for annexation (Pet. App. A25-A27). The district court likewise found no federal impediment to the annexation. It held that federal lands, such as the reservation lands at issue here, may be annexed pursuant to state law, and that such an annexation does not interfere with the "plenary

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[4]Congress has declared all persons born in the United States to a member of an Indian tribe to be citizens of the United States. 8 U.S.C. 1401(b). State citizenship is derivative of national citizenship. Indians who are citizens of the United States therefore are also citizens of the State. *Goodluck* v. *Apache County,* 417 F.Supp. 13, 14-15 (D. Ariz. 1975), aff'd, 429 U.S. 876 (1976). See *Slaughter-House Cases,* 83 U.S. (16 Wall.) 36, 112 (1873).

and exclusive power of the federal government to deal with the Reservation and its residents" (*id.* at A27-A31).

3. The court of appeals affirmed (Pet. App. A1-A16). Like the district court, the court of appeals held that the annexation of the reservation lands was proper under state law (*id.* at A7-A8). The court also rejected the City's argument that tribal consent was necessary in order to include the Reservation within the annexed territory. Relying on this Court's decision in *Three Affiliated Tribes* v. *Wold Engineering*, No. 82-629 (May 29, 1984), the court held that whatever jurisdiction Minnesota acquired in 1953, pursuant to Public Law 280,[5] to apply civil laws of general applicability to Indian country was not divested by the 1968 amendments to Public Law 280,[6] which require all subsequent assertions of jurisdiction to be preceded by tribal consent (Pet. App. A8-A10). In addition, the court concluded that the City was incorrect in any event in equating annexation with an increase in civil jurisdiction over the reservation (*id.* at A10). Because the annexation did nothing more than change the boundaries of the City, so that the Reservation thenceforth was within Prior Lake rather than Eagle Creek Township, the court concluded that annexation neither " 'frustrates nor interferes with tribal self-government,' " nor " 'impairs a right granted or reserved by federal law' " (*ibid.*, quoting *Chase* v. *McMasters*, 573 F.2d 1011, 1018 (8th Cir.), cert. denied, 439 U.S. 965 (1978)). The court therefore held that the annexation was not barred by federal law and that residents of the Reservation were entitled to municipal services in the same manner as other residents of the City. In addition, because annexation did not expand the scope of state regulatory jurisdiction over Indians that was permitted by federal law,

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[5]Act of Aug. 15, 1953, ch. 505, § 4, 67 Stat. 589, 28 U.S.C. 1360.

[6]Pub. L. No. 90-284, § 406, 82 Stat. 80, 25 U.S.C. 1326.

the court of appeals affirmed the district court's dismissal of the City's counterclaim for a declaratory judgment that all municipal ordinances and regulations and state laws are applicable to reservation residents if the Reservation is held to be within the City of Prior Lake (*id.* at A11).

ARGUMENT

The court of appeals correctly applied established principles under this Court's decisions addressing the subject of annexation under state law of lands held by the federal government. Its decision does not conflict with any decision of this Court or other courts of appeals. Review by this Court therefore is not warranted.

1. In *Howard* v. *Commissioners*, 344 U.S. 624 (1953), this Court addressed the validity of the annexation by the City of Louisville of federally owned land on which a Naval Ordnance Plant was located. Employees of the plant challenged a tax levied for the privilege of working in the city. After the state court upheld the tax, the employees argued in this Court that the tax should be enjoined because the land on which the plant was located ceased to be a part of the State after it was acquired by the United States and it therefore could not properly have been annexed by the city. In sustaining the tax, this Court stated (344 U.S. at 627):

> [T]he fiction of a state within a state can have no validity to prevent the state from exercising its power over the federal area within its boundaries, so long as there is no interference with the jurisdiction asserted by the Federal Government. The sovereign rights in this dual relationship are not antagonistic.

Several years later, in *Evans* v. *Cornman*, 398 U.S. 419 (1970), the Court held that a Maryland county denied equal protection of the laws to residents of the federal enclave upon which the National Institutes of Health (NIH) were located by denying them the right to vote. The Court again

rejected the "fiction of a state within a state" (398 U.S. at 421-422) and held that the NIH grounds did not cease to be a part of the State when the federal enclave was created.

The principles just discussed apply to annexations that encompass lands within an Indian Reservation to the same extent as they apply to other lands that are subject to the exclusive jurisdiction of the United States. Federal law imposes no absolute barrier to such boundary changes under state law for purposes of distributing governmental powers and responsibilities that derive from state law. See *Oglala Sioux Tribe* v. *South Dakota,* 770 F.2d 730, 736 (8th Cir. 1985). To be sure, there are recognized limitations on the authority of a State (or its political subdivisions) to exercise taxing or other general regulatory jurisdiction on an Indian reservation—even where, as in Minnesota (see 28 U.S.C. 1360), the State's civil adjudicatory jurisdiction has been extended onto the reservation by Public Law 280. See *Bryan* v. *Itasca County,* 426 U.S. 373 (1976); *Ramah Navajo School Board, Inc.* v. *Bureau of Revenue,* 458 U.S. 832 (1982); *New Mexico* v. *Mescalero Apache Tribe,* 462 U.S. 324 (1983). But a mere change in municipal boundaries does not in itself impermissibly interfere with the jurisdiction of the Tribe or the United States within the reservation or with the Indians' use and occupancy of the reservation. Compare *Howard* v. *Commissioners,* 344 U.S. at 626-627.

After annexation, as before, the pertinent question is whether a particular exercise of regulatory or taxing jurisdiction by the State (or the responsible political subdivision of the State) " 'would interfere with reservation self-government or would impair a right granted or reserved by federal law.' " *Rice* v. *Rehner,* 463 U.S. 713, 718 (1983), quoting *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145,

148 (1973). See, *e.g., Three Affiliated Tribes* v. *Wold Engineering,* No. 82-629 (May 29, 1984), slip op. 8-10. Accordingly, after annexation, the determination whether any given assertion of jurisdiction by the newly responsible political subdivision of the State would impermissibly interfere with tribal self-government or the operation of federal law requires a "particularized inquiry into the nature of the state, federal, and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law." *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 145 (1980). As regards the City of Prior Lake and the Reservation involved in this case, that question must be resolved in the future on a case-by-case basis, if and when the City actually asserts jurisdiction over certain on-reservation activities. It cannot be resolved now on the categorical basis the City proposes (see Pet. 8-9), under which there are only two extreme alternatives: either annexation of an Indian reservation makes the full panoply of state and local laws applicable to the Indian reservation and its residents, or there can be no annexation under state law at all. Cf. *Oglala Sioux Tribe* v. *South Dakota,* 770 F.2d at 736. This Court has eschewed such a rigid, all-or-nothing approach to the question of the application of state law on an Indian reservation. See, *e.g., Ramah Navajo School Board,* 458 U.S. at 845-846.

For these reasons, the court of appeals was correct in concluding that the City "mistakenly equates annexation with an increase of civil jurisdiction over the Reservation" (Pet. App. A10).[7] And because annexation under state law

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[7]The City relies (Pet. 7, 9) on the observation in this Court's decision in *Bryan* v. *Itasca County* that tribal governments are disabled under many state laws from incorporating as local units of government. See 426 U.S. at 388 n.14, citing Goldberg, *Public Law 280: The Limits of State Jurisdiction Over Reservation Indians,* 22 U.C.L.A. L. Rev. 535, 581 (1975). Based on this observation, the City argues that annexation

does not in itself expand the scope of state civil jurisdiction over on-reservation affairs that is permitted by federal law, the City's repeated contention (Pet. 7, 9, 10, 11) that annexation is inconsistent with the limited scope of civil jurisdiction conferred by Public Law 280, as construed in *Bryan* v. *Itasca County,* also is erroneous.[8]

2. Petitioner also asserts (Pet. 7-8) that the courts below have approved a kind of annexation for which state law does not provide. However, as both courts below noted (Pet. App. A8, A26-A27), the Municipal Commission of the State of Minnesota approved the annexation in question

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amounts to "forcible incorporation" (Pet. 9) that interferes with tribal self-government. This argument is based on a misapprehension of the impact of the footnote in this Court's opinion upon which it relies. The Court was simply making the point in *Bryan* v. *Itasca County* that if reservation property were subject to state taxation, the inability of tribal governments to incorporate under state law would relegate them to a level below that of counties and municipalities, which would siphon off the primary revenue base. The Court believed that this potentiality reinforced the conclusion that Public Law 280 did not authorize state taxation of Indian property on a reservation. Thus, the opinion in *Bryan* v. *Itasca County* supports our submission that the mere fact that an Indian reservation is situated within the boundaries of a political subdivision—a county in *Bryan* v. *Itasca County,* and a city in this case—does not make that subdivision's laws fully applicable to the reservation.

[8]The City's argument (Pet. 11) that it is unfair to require it to provide municipal services to reservation residents, even though it cannot apply the full range of municipal taxing and regulatory laws to the Reservation, is one that must be directed to Congress rather than to this Court. In *Bryan* v. *Itasca County,* the Court noted that Congress, in enacting Public Law 280, recognized that certain inequities might arise because the special tax-exempt status of Indian lands would prevent those lands from supporting the state courts that would resolve disputes under the jurisdiction newly conferred on the States by Public Law 280. 426 U.S. at 381-383. Nevertheless, Congress determined that enactment of Public Law 280 was necessary in order to "redress the lack of adequate Indian forums for resolving private legal disputes between reservation Indians, and between Indians and other private citizens" (*id.* at 383).

under applicable state law standards, and it referred specifically to the "north line of [the] Indian Reservation" as forming a part of the boundary of the post-annexation City of Prior Lake (*id.* at A53-A54). Petitioner did not seek review of that decision. It is not clear why that state-law determination should now be open to collateral attack in these federal proceedings. In any event, the 1972 determination by the Municipal Commission strongly supports the reasonableness of the district court and court of appeals' conclusion, applying the Minnesota Supreme Court's decision in *State* v. *City of White Bear Lake,* 255 Minn. 28, 95 N.W. 2d 294 (1959), that state law did not impose any impediment to the annexation. See Pet. App. A7-A8. That question of state law does not warrant further review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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